

LLW *notes*

Volume 26, Number 3 May/June 2011

Texas Compact/State of Texas

Texas Legislature Passes Bills re Out-of-Region Waste Disposal and Compact Commission Terms

During the current session, the Texas Legislature passed legislation (SB 1504 and SB 1605) regarding, among other things, the disposal of out-of-region waste at the Waste Control Specialists, LLC (WCS) facility that is currently being constructed in Andrews County and the terms of Commissioners to the Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC).

Although the bills both contain language pertaining to the disposal of out-of-region waste at the WCS facility, no waste may be imported to the State of Texas without approval by the TLLRWDC.

For an in-depth overview of waste-related bills as originally approved by the Senate, please see LLW Notes, March/April 2011, pp. 1, 22-28.

Interested parties may track these waste-related bills on-line at <http://www.capitol.state.tx.us/>.

Brief Overview of SB 1504

SB 1504 was filed on March 10, 2011. The bill—which was introduced by Texas State Senators

Keliger (Republican, 31st District) and Juan "Chuy" Hinojosa (Democrat, 20th District)—was read for the first time on March 22, 2011. It was then referred to the Senate Committee on Natural Resources. A public hearing on the bill was held on April 5, 2011, after which it was reported favorably as substituted on April 11, 2011.

On April 13, 2011, the full Senate considered and passed SB 1504 by a vote of 31 to 0 with five separate floor amendments. On April 14, 2011, the House received SB 1504 for consideration. On May 17, 2011, the Texas House passed SB 1504 with amendments by a vote of 108 to 36. Because the House-approved measure contained additional amendments, those

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As part of that mission, the LLW Forum publishes a newsletter, news flashes, and other publications on topics of interest and pertinent developments and activities in the states and compacts, federal agencies, the courts and waste management companies. These publications are available to members and to those who pay a subscription fee.

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

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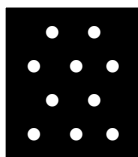
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Key to Abbreviations

U.S. Department of Energy	DOE
U.S. Department of Transportation	DOT
U.S. Environmental Protection Agency	EPA
U.S. Government Accountability Office	GAO
U.S. Nuclear Regulatory Commission	NRC
Naturally-occurring and accelerator-produced radioactive material	NARM
Naturally-occurring radioactive material	NORM
Code of Federal Regulations	CFR

Low-Level Radioactive Waste Forum, Inc.

Fall 2011 LLW Forum Meeting Registration Now Open ***Santa Fe, New Mexico on October 17-18, 2011***

The Low-Level Radioactive Waste Forum will host its fall 2011 meeting at the Inn and Spa at Loretto in Santa Fe, New Mexico. The Rocky Mountain Low-Level Radioactive Waste Board and the Midwest Interstate Low-Level Radioactive Waste Compact Commission are co-sponsoring the full two-day meeting—which will be held on Monday, October 17, and Tuesday, October 18. The Executive Committee will meet on Monday morning.

A meeting bulletin and registration form can be found on the LLW Forum's web site at www.llwforum.org.

Attendance

Officials from states, compacts, federal agencies, nuclear utilities, disposal operators, brokers/processors, industry, and other interested parties are invited and encouraged to attend. The meeting is an excellent opportunity to stay up-to-date on the most recent and significant developments in the area of low-level radioactive waste management and disposal. It also offers an important opportunity to network with other government and industry officials and to participate in decision-making on future actions and endeavors affecting low-level radioactive waste management and disposal.

Additional Meetings

The LLW Forum will hold its regularly scheduled meeting all day Monday and Tuesday morning, October 17-18. On Tuesday afternoon, October 18, there will be a special session during which state and compact officials will have an opportunity to provide feedback and comment to representatives of the U.S. Nuclear Regulatory Commission on current activities and initiatives (other meeting attendees may observe). A closed

meeting of the LLW Forum's Disused Source Working Group is tentatively scheduled for Wednesday, October 19. NRC has also scheduled a public workshop on the Concentration Averaging Branch Technical Position (CA BTP) for Thursday, October 20, in Albuquerque, New Mexico. Agency staff recently notified the LLW Forum that they plan to request an extension for the draft BTP issuance.

Registration

All persons must pre-register for the meeting and pay any associated registration fees in order to be allowed entry. Registration forms are needed in order to ensure that you receive a meeting packet and name badge.

Accordingly, interested attendees are asked to please take a moment to complete the registration form at your earliest convenience and return it to Sheri Reynolds of the Rocky Mountain Board at the address, e-mail or fax number listed at the bottom of the form.

Hotel Reservations

Persons who plan to attend the meeting are encouraged to make their hotel reservations and send in their registration forms as soon as possible, as we have exceeded our block at the last few meetings.

A block of 70 rooms has been reserved for Sunday (October 16) and Monday (October 17) for meeting attendees at the special, discounted rate of \$88 (single and double occupancy rate) plus tax. The rate is available for three days prior to and after the meeting.

To make a reservation, please call the Inn and Spa at Loretto directly at (800) 727-5531 and ask for a room in the LLW Forum Meeting Block. Please

Low-Level Radioactive Waste Forum, Inc. *continued*

reserve by Friday, September 16, to receive the special, discounted rate.

Transportation

The Inn and Spa at Loretto is located approximately 67 miles from the Albuquerque International Airport in Albuquerque, New Mexico. Shuttle service is available from the Albuquerque airport through Sandia Shuttle at <http://www.sandiashuttle.com> or at (888) 775-5696. American Airlines Express offers direct flights into Santa Fe Airport, which is approximately 14 miles from the Inn and Spa at Loretto. Shuttle service is available from the

Santa Fe Airport through Road Runner Shuttle Express at (505) 424-3367.

To access the meeting bulletin and registration form, please go to www.llwforum.org and scroll down to the first bold paragraph on the Home Page. The documents may also be found on the About Page under the header "Meetings."

For additional information, please contact Todd Lovinger, the LLW Forum's Executive Director, at (202) 265-7990 or at LLWForumInc@aol.com.

Low-Level Radioactive Waste Forum Meetings 2011 and Beyond

The following information on future meetings of the Low-Level Radioactive Waste Forum is provided for planning purposes only. Please note that the information is subject to change.

For the most up-to-date information, please see the LLW Forum's web site at www.llwforum.org.

Fall 2011 Meeting

The Rocky Mountain Low-Level Radioactive Waste Board and the Midwest Interstate Low-Level Radioactive Waste Compact Commission will co-host the LLW Forum's fall 2011 meeting. The full two-day meeting will be held at the Inn and Spa at Loretto on October 17-18, 2011. (See related story for additional information, including information about "Additional Meetings.")

2012 Meetings

The Southwestern Low-Level Radioactive Waste Compact Commission and State of California will co-host the spring 2012 meeting of the LLW Forum. The meeting will be held at the Hyatt Regency San Francisco Airport Facility in Burlingame, California on April 24-25, 2012. The hotel—which is rated AAA Four Diamond Award Winning Service & Accommodations—

has 24 hr complimentary shuttle service to and from the airport, as well as shuttle service from the hotel to the Bay Area Rapid Transit (BART) station.

The Central Midwest Interstate Low-Level Radioactive Waste Commission and the State of Illinois have agreed to cohost the LLW Forum's fall 2012 meeting. This will be the third time that the Commission and Illinois have cohosted a meeting of the LLW Forum since we began operations as an independent, non-profit organization in 2000. The meeting will be held at the Embassy Suites Lakefront Hotel in downtown Chicago on October 11-12, 2012.

Search for Volunteer Hosts for 2013 Meetings

The LLW Forum is currently seeking volunteers to host both the spring and fall 2013 meetings and those thereafter. Although it may seem far off, substantial lead-time is needed to locate appropriate facilities.

If your state or compact has not hosted a meeting in the past two years, we ask that you consider

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Central Interstate Compact

Central Interstate Compact Hosts Annual Meeting

The Annual Meeting of the Central Compact Commission was held at the Doubletree by Hilton Hotel in Overland Park, Kansas on Tuesday, June 14, 2011 beginning at 9:00 am.

The purpose of the meeting was “to take necessary action on reports, meeting minutes, export applications, export fee schedule (Rule 1), KPMG audit, financial consultant contract, future administrative funding, administrative budget, election of Chairman for fiscal year 2011-12, and all other business to come before the Commission.”

The agenda was as follows:

- ◆ Call to Order and Roll Call
- ◆ General Public Comment Period
- ◆ Reports
 - Commission Administrator
 - Legal Counsel
- ◆ Ratify Action Taken
 - Export Applications Approved
- ◆ Meeting Minutes
 - Annual Meeting on June 22, 2010
- ◆ KPMG Audit for Fiscal Year 2009-10
- ◆ Financial Consultant Contract for Fiscal Year 2011-12
- ◆ Future Administrative Funding
- ◆ Commission Administrative Budget
 - Budget Adjustments Fiscal Year 2010-11
 - Export Fee Schedule (Rule 1) Fiscal Year 2011-12
 - Administrative Budget Fiscal Year 2011-12
- ◆ Election of Commission Chairman for Fiscal Year 2011-12
- ◆ Confirm Date and Location for Next Commission Meeting

- ◆ Personnel Matters: Administrator Review
- ◆ Adjourn

For additional information, please contact the Central Interstate Commission's office at (402) 476-8247 or via e-mail at rita@cillrwcc.org. The agenda can also be found on the Commission's web page at www.cillrwcc.org.

Midwest Compact

Midwest Compact Commission Holds Annual Meeting

The Midwest Interstate Low-Level Radioactive Waste Compact Commission held its Annual Meeting by telephone conference call from approximately 10:00 am to 12:00 pm (CDT) on Wednesday, June 8, 2011.

The meeting agenda was as follows:

- ◆ Call to Order and Roll Call
- ◆ Review of the Minutes of the Meeting of June 14, 2010
- ◆ Consideration of Accounting and Legal Services Proposals
- ◆ Review of the Financial Report
- ◆ Chair's Report, Including Adoption of 2011-12 Budget
- ◆ Election of Officers
- ◆ Other Business
- ◆ Adjournment

The public was invited and encouraged to attend.

For additional information, please contact Stanley York, Executive Director of the Midwest Compact, at (608) 831-5434 or at stan.york@tds.net.

Midwest Compact/State of Iowa

NRC Monitors Event at Duane Arnold Nuclear Power Plant

On May 3, 2011, the U.S. Nuclear Regulatory Commission sent out a press release announcing that the agency was monitoring a fire at the Duane Arnold nuclear power plant that was being fueled by hydrogen from the tank of a delivery truck. Hydrogen is used in plant operations to cool the main turbine generator.

The NRC activated its Emergency Response Center at the Region 3 office in Lisle, Illinois, to monitor an Alert that was declared at the Duane Arnold nuclear power plant at 2:08 p.m. CDT. The plant is located about eight miles northwest from Cedar Rapids, Iowa.

The plant operator, NextEra Energy Duane Arnold, declared an alert due to a truck catching fire as it was making a delivery to the plant. The fire was in the vicinity of the utility's pump house which houses plant equipment, but was outside the plant-protected area. The fire did not affect any plant safety related equipment and the plant continued to operate at 100 percent power. According to the NRC press release, there was no impact to public health.

The utility reported that the truck driver was transported to a local hospital with minor injuries. Local fire departments responded to the site.

An alert is the second lowest of four emergency levels for a nuclear power plant and represents degradation in plant safety.

Two NRC resident inspectors at the plant and staff in the Region 3 office responded to the event and continued to monitor the situation until it was resolved. The agency's primary concern was to make sure that the public was protected and that the plant operator was taking appropriate actions to address the issue.

Northwest Compact/State of Idaho

Hearing Scheduled re AREVA's Proposed Uranium Enrichment Plant

On July 12, 2011, the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) will conduct an evidentiary hearing on environmental issues concerning the license application of AREVA Enrichment Services (AES) to construct and operate a uranium enrichment plant near Idaho Falls, Idaho. The hearing—which will begin at 9:30 am Mountain Time and continue daily until finished—will be held at the Red Lion on the Falls Convention Center. Those attending are advised to arrive early in order to pass through a security check.

Among the issues to be heard are the impact of the Fukushima Daiichi accident on the need for enrichment services; AES plans for remediation of any NRC-authorized preconstruction activities; and greenhouse gas impacts of the facility's operation and power consumption.

The board will also conduct "limited appearance sessions" at which members of the public will have an opportunity to present oral comments to the judges on issues related to the hearing. At limited appearance sessions, people who are not involved in the hearing may make comments up to five minutes in length to the three judges on the board.

AES submitted a license application in December 2008 to construct and operate a gas centrifuge uranium enrichment plant in Bonneville County, Idaho. NRC staff completed its safety and environmental reviews, publishing a Safety Evaluation Report in September 2010 and a Final Environmental Impact Statement in February

States and Compacts *continued*

2011. The ASLB conducted hearings on the safety review in January.

Information on AES application and the NRC review is available at www.nrc.gov. Requests to make a statement should be submitted by July 1 via facsimile to (301) 415-5599 or via email to Jonathan.Eser@nrc.gov or Paul.Bollwerk@nrc.gov.

Northwest Compact/State of Utah

Utah Radiation Control Board Hosts May and June Meetings

The Utah Radiation Control Board held regularly scheduled meetings on Tuesday, May 10, 2011 and on Tuesday, June 14, 2011. The meetings—which were open to the public—were held in Conference Room 1015 of the Multi Agency State Office Building at 195 North 1950 West in Salt Lake City, Utah. They were both scheduled from 3:00 pm to 5:00 pm.

May 2011 Meeting Agenda

The following items, among others, were on the May meeting agenda:

- ◆ approval of minutes of past meeting;
- ◆ status of rulemaking on R313-25-8, technical analysis: effective date of April 4, 2011; set NRC review response;
- ◆ annual approval of mammography imaging medical physicists;
- ◆ presentation from Waste Control Specialists (WCS) on the status of the planned Andrews County, Texas facility;
- ◆ status of EnergySolutions' depleted uranium performance assessment;
- ◆ evaluation of Studsvik/EnergySolutions' SEMPRASAFE;
- ◆ five year review of perpetual care and financial assurance for EnergySolutions;
- ◆ tolling agreement for Denison Mines;
- ◆ Division of Radiation Control activities report;
- ◆ update re Fukushima Daiichi Japan nuclear power plant;
- ◆ business regulation review of Governor Herbert;
- ◆ U.S. Nuclear Regulatory Commission's IMPEP briefing;
- ◆ activity updates regarding NRC/U.S. Department of Energy;
- ◆ follow-up report regarding EnergySolutions' stakeholder forum of March 16;
- ◆ reauthorization of the Utah Radiation Control Act; and,
- ◆ public comment period.

June 2011 Meeting Agenda

The following items, among others, were on the June meeting agenda:

- ◆ introduction of new board member (Dr. Ulrich Rassner);
- ◆ approval of minutes of past meeting;
- ◆ change in proposed rule for R305-6-101, et. seq., Administrative Procedures (Additional changes are being proposed as a result of receiving comments during the public comment period. As a department-wide rule change, all of the boards within DEQ will need to approve the proposed rule changes by approving the change in the proposed rule.);
- ◆ R313-17, Administrative Procedures (Final adoption of the proposed changes to incorporate the department-wide administrative procedures rule, as noted above.);
- ◆ R313-12, R313-14, R313-16, R313-17, and R313-18 (Approval to file five-year review for each rule.);
- ◆ R313-26-4, Shipper's Requirements (Proposed change to add a requirement related to the integrity of shipping containers.);

- ◆ annual approval of mammography imaging medical physicists;
- ◆ status of EnergySolutions' depleted uranium performance assessment (stakeholder briefing on June 16 at 2:00 pm in the DEQ board room);
- ◆ evaluation of Studsvik/EnergySolutions' SEMPRASAFE;
- ◆ Division of Radiation Control activities report;
- ◆ U.S. Nuclear Regulatory Commission activity update;
- ◆ election of the chair and vice-chair at the next scheduled board meeting; and,
- ◆ public comment period.

Background and Next Meeting Date

The Radiation Control Board—which is appointed by the Utah Governor with the consent of the Utah Senate—guides development of Radiation Control policy and rules in the state.

The Board holds open meetings ten times per year at locations throughout the state. A public comment session is held at the end of each meeting.

The next Board meeting has been scheduled for July 12, 2011 or August 9, 2011. The meeting will be held in Conference Room 1015 of the Multi Agency State Office Building at 195 North 1950 West in Salt Lake City, Utah. The meeting will be open to the public.

Copies of the Utah Radiation Control Board meeting agendas can be found at <http://www.radiationcontrol.utah.gov/Board/minagd/agenda.pdf>.

For additional information, please contact Rusty Lundberg of the Utah Department of Environmental Quality, Radiation Control Board, at (801) 536-4250 or at rlundberg@utah.gov.

Rocky Mountain Board

Rocky Mountain Board Hosts Regular and Annual Meetings

The Rocky Mountain Board held both a Regular Meeting and an Annual Meeting at the Courtyard Marriott at 6901 Tower Road in Denver, Colorado on June 16, 2011. The Regular Meeting began at 1:00 pm. The Annual Meeting began immediately thereafter.

Interested parties and the public are welcome to attend to Board meetings. There is always an opportunity for public comment at the meeting.

The Regular Meeting agenda was as follows:

- ◆ Approval of Minutes of the December 3, 2010 Regular Meeting and Notice of Actions Taken in February 10, 2011 Telephonic Meeting
- ◆ Status of Clean Harbors Regional Facility
- ◆ Export of Equipment Containing NORM—Discussion of Potential Approaches to Consider Request for Exemption
- ◆ Update on National Developments
 - LLRW Forum Disused Source Working Group
 - Texas LLW Facility
 - 10 CFR Part 61 Amendments
- ◆ Executive Director's Report
 - Fiscal Status/Investment Summary
 - Permit Fee Revenue for 2010 and 2011
 - Expenditure/Budget Comparison
 - Status of Volumes Authorized for Export and Disposal in 2010 and 2011
 - October 2011 LLW Forum Meeting in Santa Fe
 - Waste Management 2011 Meeting
 - Rad Waste Summit

States and Compacts *continued*

The Annual Meeting agenda was as follows:

- ◆ Election of Officers
- ◆ Consideration of Fiscal Year 2011-12 Budget

For additional information, please contact Leonard Slosky, Executive Director of the Rocky Mountain Board, at (303) 825-1912 or at lslosky@rmlwb.us.

Southeast Compact

Southeast Compact Hosts Meetings in June

The Southeast Compact Commission held a Policy and Planning Committee Meeting, Administrative Committee Meeting, and Annual Meeting at the Double Tree Hotel at 315 4th Avenue North in Nashville, Tennessee on June 29-30, 2011. All Commission meetings are open to the public.

The Policy and Planning Committee met at 2:00 pm in Salon A/B. The committee received an update on legislation adopted by the Texas Legislature in the 2011 session and an update of current rulemaking activities in the EPA and NRC. The meeting agenda was as follows:

- ◆ Introduction and Remarks
- ◆ Public Comment Pertaining to Agenda Items Only
- ◆ Approval of Minutes from March 23, 2011 Meeting
- ◆ Party State Reports
- ◆ Staff Report
- ◆ Update: Legislation Adopted by the Texas Legislature in 2011 Session
- ◆ Discussion of Implications of Texas Legislation for Potential Access to Disposal of

Out-of-Region Waste and Recommendations for Action

- ◆ Update: Current Rulemaking Activities in EPA and NRC
- ◆ Committee Discussion of Implications for Southeast Compact Generators and Recommendations for Action
- ◆ Other Business
- ◆ Public Comment
- ◆ Adjourn

The Administrative Committee met at 4:30 pm in Salon A/B to consider the Proposed Budget for 2011-12. The meeting agenda was as follows:

- ◆ Introduction and Remarks
- ◆ Public Comment Pertaining to Agenda Items Only
- ◆ Approval of Minutes from March 23, 2011 Meeting
- ◆ Staff Report
- ◆ Consideration of Proposed Budget for 2011/12
- ◆ Other Business
- ◆ Public Comment
- ◆ Adjourn

The 98th Annual Meeting of the Southeast Compact Commission began at 9:00 am in Salon A/B. Items for consideration included a Proposed Budget for Fiscal Year 2011-12, election of officers, committee reports and recommendations, and other business. The meeting agenda was as follows:

- ◆ Call to Order—Introductory Remarks
- ◆ Establishment of Quorum
- ◆ Approval of March 23, 2010 Minutes
- ◆ Comments Pertaining to Agenda Items Only
- ◆ Executive Director's Report
- ◆ Treasurer's Report
 - Ratification of Interim Action by Treasurer
- ◆ State Reports and Liaison Reports
- ◆ New Business
 - Report of the Policy and Planning Committee

- Report of the Administrative Committee
 - ◆ Election of Officers
 - ◆ Comments
 - ◆ Adjourn

For additional information, please contact the Southeast Compact Commission at (919) 821-0500 or at secc@secompact.org.

Southeast Compact Commission/State of Alabama

Valve Failure at Browns Ferry of High Safety Significance

The U. S. Nuclear Regulatory Commission staff has concluded that the failure of a low pressure coolant injection valve last fall at the Browns Ferry nuclear plant was of “high safety significance” and will result in increased NRC inspection and oversight of the facility. NRC inspection findings are evaluated using a safety significance scale with four levels, ranging from “green” for minor significance, through “white” and “yellow” to “red” for high significance.

The three-unit Browns Ferry plant, operated by the Tennessee Valley Authority (TVA), is located near Athens, Alabama -- approximately 32 miles west of Huntsville. On October 23, 2010, a valve failed to open when operators attempted to use the residual heat removal shutdown cooling loop during Unit 1 refueling. TVA later determined that the last time the valve had definitely worked as required was on March 12, 2009, when the loop was placed in service.

According to an NRC press release, the public was never endangered because no actual event occurred. However, the system is counted on for core cooling during certain accident scenarios and the valve failure left it inoperable, which

potentially could have led to core damage had an accident involving a series of unlikely events occurred.

A regulatory conference was held on April 4 to discuss the issue. TVA stated that the failed valve was the result of defective manufacturing but still would have opened and supplied the necessary cooling water. The NRC review disagreed and concluded the violation was “red” or of “high safety significance.”

“The valve was repaired prior to returning the unit to service and Browns Ferry continued to operate safely,” said Victor McCree, NRC Region II administrator. “However, significant problems involving key safety systems warrant more extensive NRC inspection and oversight.”

The finding results in increased NRC oversight at Browns Ferry including a supplemental inspection to evaluate safety, organizational and programmatic issues at the plant. The inspection, which has not yet been scheduled, will include extensive reviews of programs and processes not inspected as part of the NRC’s baseline inspection program. The facility’s safety culture will also be assessed.

The final significance letter issued to TVA with more information on the issue will be available through the Region II office or via the NRC web page at www.nrc.gov/reading-rm/adams.html. The number to access the letter is ML111290482.

For additional information, please contact Roger Hannah at (404) 997-4417 or Joey Ledford at (404) 997-4416, both of the NRC's Office of Public Affairs, Region II.

Southeast Compact/Commonwealth of Virginia

Unusual Event Declared at Surry Plant

In mid-April 2011, the U.S. Nuclear Regulatory Commission monitored a situation at the Surry nuclear power plant after the site lost offsite power due to a tornado affecting an electrical switchyard next to the plant. NRC monitored the event through the agency's resident inspectors at the site and in the Atlanta regional office. The plant is operated by Dominion and is located near Surry, Virginia—approximately 17 miles northwest of Newport News.

The two units at the Surry plant automatically shut down after losing offsite power. Four of the plant's diesel generators started to power the units' emergency loads. Plant operators then partially restored offsite power to both plants. Safety systems operated as needed.

Dominion notified NRC of the situation soon after it happened and the agency dispatched its resident inspectors to the Surry plant site as well as staffed its incident response center in Atlanta. Dominion declared an unusual event, the lowest of the four NRC emergency classification levels, around 7:00 pm on April 17, 2011.

Southwestern Compact

Southwestern Compact Commission Hosts 61st Meeting

On May 6, 2011, the Southwestern Low-Level Radioactive Waste Commission hosted its 61st meeting in Santa Barbara, California.

The following topics, among others, were on the meeting agenda:

- ◆ call to order
- ◆ roll call
- ◆ welcome and introductions
- ◆ statement regarding due notice of meeting
- ◆ reports: Commission Chair, Executive Director, licensing agency, and party states
- ◆ exportation: ratification of approved petitions
- ◆ report on status of incompatibility issues
- ◆ discussion re commenting on the DOE Draft GTCC EIS regarding B and C disposal pathway
- ◆ status of NRC blending initiative and revision of 10 CFR Part 61
- ◆ consideration of amending export policy re recycling
- ◆ consideration of amending requirements document re liability
- ◆ consideration of adopting policy re 2010 Radiation Source Protection & Security Task Force Report
- ◆ lessons learned from *EnergySolutions v. Northwest Compact*
- ◆ discussion of radioactive waste from Japan
- ◆ amendment of approved budget
- ◆ public comment
- ◆ future agenda items
- ◆ next meeting: October 14, 2011 in Sacramento, California
- ◆ adjournment

States and Compacts *continued*

Members of the public were invited to attend the meeting and comment on specific agenda items as the Commission considered them. The total public comment time on each agenda item was limited to 15 minutes. Written material was also accepted. A 15-minute public comment period was provided near the end of the meeting at which time members of the public were invited to bring before the Commission issues relating to low-level radioactive waste but which were not on the agenda.

For additional information, please contact Kathy Davis, Executive Director of the Southwestern Compact Commission, at (916) 448-2390 or at swllrwcc@swllrwcc.org.

(Continued from page 1)

changes needed to be considered by the Senate.

On May 26, 2011, by a vote of 31 to 0, the Texas Senate concurred in House amendments to SB 1504. The legislation became effective upon signature by the Governor.

House Amendments Among other things, the House amendments

- ◆ require the company to get an amendment or modification to its current disposal license to include acceptance of out-of-region waste; and,
- ◆ authorize WCS to set disposal fees for out-of-region waste.

Other Bill Provisions The bill limits the disposal of out-of-region waste to a maximum of 30 percent of the total facility volume and radioactivity as established in the license issued by the Texas Commission on Environmental Quality (TCEQ). The remaining capacity will be split between Texas (56 percent) and Vermont (14 percent). Waste of international origin is prohibited from being accepted for disposal at the facility.

As approved, the bill requires out-of-region generators to pay a 20 percent surcharge for their imported waste. According to local press reports, this could add up to \$32 million to the state coffers over a two-year period.

The bill also provides that each state that becomes a party to the Texas Compact after January 1, 2011, but before September 1, 2018, shall contribute a total of \$30 million to the host state. A state that becomes a party after September 1, 2018, but before September 1, 2023, shall contribute \$50 million. Any state that has previously withdrawn from the compact would be required to pay the previously committed fee of \$25 million in addition to the above-stated fees.

For a more detailed overview of the provisions of SB 1504, see LLW Notes, March/April 2011, pp. 1, 22-28.

Brief Overview of SB 1605

SB 1605 was read in the Senate for the first time on March 23, 2011. The bill—which was introduced by Texas State Senator Kel Seliger (Republican, 31st District)—was then referred to the Senate Committee on Natural Resources. A public hearing on the bill was held on April 5, 2011, after which it was reported favorably as substituted on April 7, 2011.

On April 13, 2011, the full Senate considered and passed SB 1605 by a vote of 30 to 1 with various amendments. On April 14, 2011, the House received SB 1605 for consideration. The House approved SB 1605 on the third reading with amendments by a vote of 137 to 1. Because the House-approved measure contained amendments, it returned to the Senate for consideration of the House changes.

On May 27, 2011, the Texas Senate concurred in House amendments to SB 1605. As the bill passed without a two-thirds margin of elected members, it will become effective on September 1, 2011.

States and Compacts *continued*

House Amendments to SB 1605 The House amendments to SB 1605 state that host state Commissioners on the TLLRWDCD will serve staggered six-year terms, with the terms of two host state Commissioners expiring on September 1 of each odd-numbered year. (The original Senate-approved version provided that host state Commissioners on the TLLRWDCD would serve staggered six-year terms, with the terms of two host state Commissioners expiring on February 1 of each even-numbered year.)

The House amendments to SB 1605 also state that the term of office of TLLRWDCD Commissioners serving on the date that SB 1605 becomes effective will expire on the date the bill becomes effective. The Governor will then appoint host state Commissioners with staggered terms, two each expiring on September 1, 2013; September 1, 2015; and, September 1, 2017. (The Senate-approved version provided that the term of office of TLLRWDCD Commissioners serving on the date that SB 1605 becomes effective would expire on February 1, 2012. The Governor would then appoint host state Commissioners with staggered terms, two each expiring on February 1, 2014; February 1, 2016; and, February 1, 2018.)

Other Bill Provisions SB 1605 contains, among others, the following provisions:

Bylaws Requirement: SB 1605 prohibits WCS from accepting waste at the compact waste disposal facility unless the TLLRWDCD has adopted bylaws necessary to carry out the terms of the compact.

Independent Entity: SB 1605 provides that the TLLRWDCD “is an independent entity and not a program, department, or other division of, or administratively attached to,” the TCEQ. SB 1605 prohibits the appropriation of money for the TLLRWDCD as part of an appropriation for the TCEQ.

Biennial Reports: Pursuant to SB 1605, the TLLRWDCD is required to file with the Governor

and appropriate legislative committees a written report on or before December 1 of each even-numbered year. The report must include:

- ◆ a statement of the activities of the TLLRWDCD during the preceding fiscal biennium;
- ◆ the TLLRWDCD’s recommendations for necessary and desirable legislation; and,
- ◆ an accounting of all funds received and disbursed by the TLLRWDCD during the preceding biennium.

Representation by Attorney General: SB 1605 provides that the Attorney General shall represent the TLLRWDCD in all matters before the state courts and any court of the United States.

Applicability of Sunset Act: Under SB 1605, the TLLRWDCD is subject to review under the Texas Sunset Act as if it were a state agency, but may not be abolished thereby. The bill provides that the TLLRWDCD shall be reviewed during the period in which state agencies scheduled to be reviewed or abolished in 2013 and every 12th year thereafter are reviewed. The costs of such reviews will be borne by the TLLRWDCD, which is also subject to audit by the state.

For a more detailed overview of the provisions of SB 1605, see LLW Notes, March/April 2011, pp. 1, 22-28.

Background

License Status On January 14, 2009, by a vote of 2 to 0, TCEQ Commissioners denied hearing requests and approved an order on WCS’ Radioactive Material License Application No. R04100. (See *LLW Notes*, January/February 2009, pp. 1, 9-11.) Following the completion of condemnation proceedings and the acquisition of underlying mineral rights, TCEQ’s Executive Director signed the final license on September 10, 2009. (See *LLW Notes*, September/October 2009, pp. 1, 12-13.)

States and Compacts *continued*

The license allows WCS to operate two separate facilities for the disposal of Class A, B and C low-level radioactive waste—one being for the Texas Low-Level Radioactive Waste Disposal Compact, which is comprised of the States of Texas and Vermont, and the other being for federal waste as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments.

Import/Export Rules On January 4, 2011, the Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC) approved revised Preliminary Rules on the Exportation and Importation of Waste by a vote of five to two. (See *LLW Notes*, January/February 2010, pp. 1, 16.) Various amendments to the rules were accepted prior to passage, including those offered by the Vermont Commissioners that clarified issues regarding the reserving of disposal capacity at the regional commercial facility for generators from the State of Vermont.

The vote followed a series of legal maneuvers by Public Citizen and the Texas Civil Rights Project that attempted to block the Commission from proceeding to act on the proposed rules. The groups initially succeeded at getting a state district court judge to enjoin the Commission from adopting, approving, or otherwise implementing the proposed rules. However, a federal district judge subsequently dismissed the case and dissolved the temporary restraining order ("TRO") after determining that neither the state nor federal court had jurisdiction to prevent the Commission from acting on the proposed rules.

Construction Authorization On January 7, 2011, TCEQ Executive Director Mark Vickery approved the commencement of construction of the planned WCS low-level radioactive waste disposal facility "subject to all applicable license conditions, rules and statutes." (See *LLW Notes*, January/February 2010, pp. 19-21.) Earlier the same day, TCEQ and WCS executed a "Lease and Indemnification Agreement Concerning Low-Level Radioactive Waste Disposal in Andrews County, Texas." The document sets forth

provisions relating to conveyance of the Compact Waste Disposal Facility to the State of Texas, including indemnification for any liability imposed on the state.

WCS is currently authorized for the processing, storage and disposal of a broad range of hazardous, toxic, and certain types of radioactive waste. WCS is a subsidiary of Valhi, Inc.

For additional information on WCS license application, please go to the TCEQ web page at http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html or contact the Radioactive Materials Division at (512) 239-6466.

A copy of the TLLRWDC's import/export rules and other related information may be found on the Commission's web site at <http://www.tllrwdcc.org>.

For additional information, please contact Susan Jablonski—Director of the Radioactive Materials Division at TCEQ—at (512) 239-6466 or at sjablons@tceq.state.tx.us. You may also contact Rodney Baltzer—President of WCS—at (972) 450-4235 or at rbaltzer@valhi.net. Or, you may contact Michael Ford, Chair of the TLLRWDC, at (512) 820-2930 or at michael.ford@tllrwdcc.org.

State of Nebraska

Flooding Monitored at Calhoun Nuclear Station

In early June 2011, an alert was declared at the Fort Calhoun nuclear station—located 19 miles north of Omaha Nebraska. The alert was declared on June 8 at 9:40 a.m. CDT due to an indication of fire in the west switchgear room. Automated fire suppression systems activated as expected and the fire was confirmed out at 10:20 a.m. For the duration of the event, the U.S. Nuclear Regulatory Commission monitored developments from its incident response center at its Region IV office in Arlington, Texas. The agency received updates from its onsite inspectors. The Omaha Public Power District (OPPD)—which operates the Fort Calhoun plant—notified the states of Nebraska and Iowa.

On June 6, the licensee entered a Notice of Unusual Event due to the rising level of the Missouri River and some onsite flooding. Thereafter, NRC provided round the clock staffing with its Resident Inspectors and continued to remain on site and monitored the situation during the flood conditions.

An alert is the second lowest of four emergency classes. There was no danger to the public during either incident because the plant has been shut down since April for a refueling outage and remains in that condition. Although the plant briefly lost its normal ability to cool the spent fuel pool, temperatures in the pool remained at safe levels and the plant recovered pool cooling without the need for any of the plant's multiple backup systems.

(Continued from page 5)

doing so. If necessary, we may be able to assist you in finding a co-host.

Non-state and non-compact entities are eligible to co-host LLW Forum meetings, so please let us know if your company or organization is interested in doing so.

Anyone interested in potentially hosting or sponsoring a meeting should contact one of the officers or Todd D. Lovinger, the organization's Executive Director, at (202) 265-7990 or at LLWForumInc@aol.com.

EnergySolutions LLC v. Northwest Compact

Order Entered Dismissing Claims in Suit Over Clive Facility

On June 2, 2011, the U.S. District Court for the District of Utah, Central Division, entered an order dismissing all claims in a lawsuit challenging the Northwest Compact's authority to govern *EnergySolution's* low-level radioactive disposal site in Clive, Utah.

Based upon the Stipulated Motion to Dismiss agreed to by the parties, Counts I and III were dismissed with prejudice. Count II was dismissed without prejudice.

For a detailed overview of the earlier decision by the U.S. Court of Appeals for the Tenth Circuit, please see [LLW Notes](#), November/December 2010, pp. 1, 27-32.

Background

EnergySolutions' Proposal On September 14, 2007, *EnergySolutions* filed an application with the U.S. Nuclear Regulatory Commission to import up to 20,000 tons of potentially radioactively contaminated material from Italy and to export for return to generators in Italy any of the imported waste that can not be recycled or does not meet the Clive facility's waste acceptance criteria for disposal. (See *LLW Notes*, November/December 2007, pp. 6-9.) Under the proposal, the contaminated material would be processed at *EnergySolutions'* Bear Creek facility for recycling and beneficial reuse with any resultant waste being disposed at the Clive facility. *EnergySolutions* estimates that approximately 1,600 tons of the imported material would be disposed as Class A LLRW at the Clive facility.

Northwest Compact's Response The Northwest Compact heard from both proponents and critics of *EnergySolutions'* proposal during a meeting on May 8, 2008. Following a closed-door session, they voted unanimously that the compact's Third Amended Resolution and Order—which authorizes access for LLRW to the Clive facility subject to the provisions of the company's license from the State of Utah—does not address foreign LLRW and that an arrangement would need to be adopted prior to such waste being provided access to the region for disposal at the Clive Facility. (See *LLW Notes*, May/June 2008, pp. 1, 7-9.)

Initiation of Litigation On May 5, 2008, *EnergySolutions* filed a lawsuit in the U.S. District Court for the District of Utah, Central Division challenging the Northwest Compact's authority over the Clive facility. (See *LLW Notes*, May/June 2008, pp. 25-28.) Although the action was initially filed against the Northwest Compact and its Executive Director, Michael Garner, solely in his official capacity, the court subsequently granted unopposed motions by the State of Utah and the Rocky Mountain Compact to intervene in the action as defendants. (See *LLW Notes*, September/October 2008, pp. 12-14.)

EnergySolutions' Claims *EnergySolutions* argues, among other things, that (1) the Clive facility is not a "regional disposal facility" as defined by the LLRWPA and the Northwest Compact therefore lacks authority to restrict the flow of LLRW to the facility; (2) NRC's authority and responsibility for the regulation of the export and import of byproducts and nuclear materials preempt any attempt by the Northwest Compact to restrict or prevent the importation of foreign waste to the Clive facility; and, (3) any effort by the Northwest Compact to restrict or prohibit the Clive facility from receiving foreign LLRW would amount to unauthorized discrimination against foreign commerce and would be prohibited by the dormant Commerce Clause of the U.S. Constitution.

Compact's Response The Northwest Compact challenges EnergySolutions' positions and contends that the Northwest Compact itself provides the legal basis to restrict disposal at the Clive facility; (2) the Northwest Compact Committee derives its exclusionary authority from the Compact itself, not from the Low-Level Radioactive Waste Policy Amendments Act of 1985; (3) the Northwest Compact Committee is authorized under Articles IV and V of the Compact to limit the access for out-of-region waste to the Clive facility; and, (4) the Clive facility qualifies as a "regional disposal facility" under the 1985 act. (See *LLW Notes*, November/December 2008, pp. 13-18.)

District Court Ruling On May 15, 2009, the district court issued a ruling on the parties' various motions for summary judgment on the first count of the lawsuit. (See *LLW Notes*, May/June 2009, pp. 1, 20-25.) In short, the court ruled that, with regard to the importation of low-level radioactive waste from outside of the compact region, the Northwest Compact does not have the authority to restrict access to the Clive disposal facility. The court based this ruling on its finding that Clive is a private facility operating in interstate commerce that is not covered by the compact system—i.e., it is not a "regional disposal facility" as defined under federal law. The court further ruled, however, that the Northwest Compact has authority to regulate the disposal of low-level radioactive waste that is generated within the compact's regional boundaries—including restricting disposal access for such waste to the Clive facility. Finally, the court's ruling maintains the authority of the Northwest Compact to regulate the Richland facility operated by US Ecology—regardless of the origin of waste that is sent thereto.

Appeal and Amicus Filings Notice of appeal of the district court's decision was filed in June 2009, with the associated appellate briefs being filed between August through September. (See *LLW Notes*, September/October 2009, pp. 18-21.) Also in September 2009, an Amicus Curiae Brief

in support of all defendants-appellants and seeking reversal of the district court's decision was filed jointly by the Atlantic Interstate Low-Level Radioactive Waste Compact, Central Interstate Low-Level Radioactive Waste Compact, Central Midwest Interstate Low-Level Radioactive Waste Compact, Southeast Interstate Low-Level Radioactive Waste Compact, Texas Low-Level Radioactive Waste Disposal Compact, and the Council of State Governments. The Midwest Interstate Low-Level Radioactive Waste Management Commission and the State of New Mexico also filed two separate Amicus Curiae Briefs in support of the defendants-appellants. (See *LLW Notes*, September/October 2009, pp. 18-21.)

Oral Arguments On January 14, 2010, the United States Court of Appeals for the Tenth Circuit heard oral arguments in the case at the Byron White U.S. Courthouse, Courtroom I, in Denver, Colorado. (See *LLW Notes*, November/December 2009, pp. 18-19.)

Withdrawal of Import Application On July 23, 2010, EnergySolutions sent a letter to the U.S. Nuclear Regulatory Commission seeking to withdraw its application to import the Italian waste—stating that it will instead try to help build and manage disposal facilities overseas. (See *LLW Notes*, July/August 2010, pp. 1, 7-8.) The move followed a July 14 press conference during which EnergySolutions announced, "that it is pursuing a new international business strategy that does not include the disposal of internationally generated radioactive waste at its facility in Clive, Utah." According to the press release, the company plans to focus on the long-term strategic interests of its international customers, which includes plans to provide "a wide range of engineering and technical services to facilitate final in-country disposition of these materials."

Appellate Court Ruling On November 9, 2010, the U.S. Court of Appeals for the Tenth Circuit reversed the lower court's ruling. In so doing, the Tenth Circuit Court ruled "the Northwest

Compact is statutorily and constitutionally permitted to exercise exclusionary authority over the Clive Facility." The appellate court further held that "The terms of the Compact control in this situation, and the member states were within the bounds of their authority when they denied permission regarding ... [importation of the Italian] waste." The appellate court remanded the case to the district court for further proceedings in accordance with its opinion.

For additional information, please contact Michael Garner, Executive Director of the Northwest Compact, at (360) 407-7102; Rusty Lundberg of the Utah Department of Environmental Quality at (801) 536-4257; Leonard Slosky, Executive Director of the Rocky Mountain Compact, at (303) 825-1912; or Mark Walker of EnergySolutions, at (801) 231-9194.

Texas Compact/State of Texas

Public Citizen Dismisses Petition to Depose Texas Compact Officials

On May 18, 2011, Public Citizen filed a Notice of Dismissal of its petition seeking to depose the Chairman, Vice-Chairman and former Executive Director of the Texas Low-Level Radioactive Waste Compact Commission (the "Commission").

Public Citizen had originally filed the petition seeking depositions in the District Court of Travis County, Texas, on April 13, 2011. According to the original petition, Public Citizen was seeking to depose the compact commission officials in order to investigate potential claims concerning the adoption of rules regarding the importation and exportation of radioactive waste on January 4, 2011.

Request for Deposition

In its April 13 petition, Public Citizen "seeks to depose Respondents to investigate a potential claim for violations of rights and guarantees provided by Texas law in proceedings before the Commission and by rules adopted by the Commission, and to determine whether the Commission's recent action in voting to authorize importation of radioactive waste from up to 36 other states creates a threat to Texans who live near the major highways and populated areas through which the trucks carrying the radioactive waste would pass and creates a terrorist risk that violates state and federal law."

In so doing, the Petitioner alleges many significant flaws in the process by which the import and export rules were adopted and asserts that the Commission's actions may have violated Texas law—including the Texas Open Meetings Act (TOMA), the Administrative Procedure Act (APA), and the Texas Constitution.

Specifically, Public Citizen contends that the Commission

- ◆ advertised a "non-existent, false email address to which the public was to send comment on the proposed rules," thereby potentially effectively denying the public the opportunity to submit and have considered in advance of the vote written comments on the proposed rules;
- ◆ set a deadline for submitting comments of December 26, 2010, the day after Christmas and a Sunday, which Petitioners contend should have by law been extended to Monday, December 27, 2010;
- ◆ likely failed to "consider all written and oral submissions about a proposed rule," as required by law, since the Commission could not have considered those emails that did not get through and since they only had one employee to consider over 4,000 comments in a short time frame;

Courts *continued*

- ◆ may have violated APA requirements to provide a “reasoned justification” for adopted rules including a summary of comments received, explanation of the factual basis for adoption, and rationale for disagreement with party submissions and proposals;
- ◆ appears to have failed to provide a reasonable time for interested persons to apply “for redress of grievances or other purposes, by petition, address or remonstrance;”
- ◆ may have violated TOMA requirements to “give written notice of the date, hour, place, and subject of each meeting by the governmental body;” and,
- ◆ may further have violated state and federal law “by endangering persons in Texas and other states who live adjacent to or near the highways over which the radioactive waste would be transported.”

Public citizen further argues that the adopted rules would allow the transportation of radioactive waste on major highways through large communities, thereby rendering them all vulnerable to terrorist attack, as well as health and safety hazards from accidental spillage. Petitioner also contends that official estimates indicate that the facility currently lacks the volume capacity for imported waste.

“The Commission itself has estimated that Texas alone will dispose of 5 million cubic feet of low-level radioactive waste at a compact facility to be established in Texas from the period 1995 to 2045,” states the petition. “The study conducted in response to the Texas Legislature’s charge to investigate techniques for managing low-level radioactive waste found that the compact states of Texas, Vermont, and Maine would generate 2.5 million cubic feet. The waste disposal facility is licensed for only 2.3 million cubic feet, far below the capacity need for imported waste. The only study indicating that excess capacity is available was performed by the license-holder and waste generators, both of whom have an economic

interest in underestimating those figures. Petitioner understands that this study has never been adopted or ratified by a state agency.”

Removal

On May 5, the Respondents gave notice of removal of the action to the federal district court. In so doing, they assert that “the Compact provides that “[j]urisdiction and venue of any action contesting any action of the commission *shall be in the United States District Court in the district where the commission maintains its office.*” The notice of removal states that both Margaret Henderson and Waste Control Specialists, which is seeking to intervene in the action, have consented to the removal of the proceeding.

Immediately thereafter, Public Citizen filed a motion to remand the case back to state district court, arguing that it is not a “civil proceeding” and therefore is not subject to removal. Specifically, Petitioner asserted that its filing constitutes a “pre-suit investigative mechanism, not a removable ‘civil action.’”

Respondents, however, opposed Public Citizen’s motion to remand, contending that the group “is again attempting to invoke state court jurisdiction in its attempt to challenge a rulemaking proceeding” of the Commission. In so doing, they pointed out that, prior to adoption of the import and export rules, the court ruled that jurisdiction lies exclusively in federal court and not in state court.

On May 9, the United States District Court for the Western District of Texas denied Public Citizen’s motion to remand the proceeding to state court.

By separate order, the federal district court set a hearing on all pending matters in the action for 2:00 pm on Thursday—May 19, 2011.

Notice of Dismissal

Public Citizen's May 18 Notice of Dismissal did not include a reason or explanation. It simply states as follows:

"Petitioner, Public Citizen, Inc. gives notice of dismissal of its Petition Requesting Deposition to Investigate Potential Claim or Suit, in accordance with Federal Rule of Civil Procedure 41(a)."

Background re Import and Export Rules

The Commission began considering export and import issues during two stakeholder meetings on August 7 and December 10, 2009. (See *LLW Notes*, July/August 2009, pp. 15-16 and November/December 2009, pp. 11-12.)

Subsequently, during a meeting on January 22, 2010, the Commission approved the publication of proposed rules governing the exportation and importation of low-level radioactive waste from the compact region by vote of five to two. The proposed rules were published in the *Texas Register* (35 *Texas Register* 1028) on February 12, 2010. Upon publication, a 60-day comment period was initiated. (See *LLW Notes*, January/February 2010, pp. 15-19.)

After publication of the proposed rules, the Commission held two public hearings on April 5, 2010 (in Austin) and April 6, 2010 (in Andrews), in order to allow additional comment on the proposed rule. The comment period on the rule closed on April 13, 2010.

On April 29, 2010, a working group of the Commission's Rules Committee then met in Arlington, Texas. The purpose of the meeting was to discuss and draft responses to comments and proposed revisions to the preamble and text of the proposed rules. (See *LLW Notes*, March/April 2010, pp. 16-17.)

During a meeting on June 12, 2010, however, the Commission voted to withdraw the proposed rules

as published. In addition, the Commission stated their intent to use the revised proposed rules as the starting point for a new rulemaking effort, approving the addition of a new section on importation of waste for management purposes only.

On November 27, 2010, the Commission published proposed Rules on the Exportation and Importation of Waste (31 Texas Administrative Code §§675.21 – 675.24) in the *Texas Register* (35 *Texas Register* 10,425). On behalf of the Commission, staff from the TCEQ conducted a hearing on the proposed rules in Austin, Texas on December 9, 2010. (See *LLW Notes*, November/December 2010, pp. 15-20.)

There was a thirty-day period provided during which interested stakeholders could provide comment on the proposed rules—either postmarked or e-mailed by midnight on December 26, 2010. This latest thirty-day comment period was in addition to a previous sixty-day comment period, two stakeholder meetings, two public hearings and public testimony during four public meetings. (See *LLW Notes*, November/December 2010, pp. 15-21.)

On December 24, 2010, the Commission announced that it would hold a meeting on January 4, 2011. The published agenda included agenda items for the Commission to hear public comment on the proposed import and export rules and then discuss and possibly take final action thereon.

Public Citizen and the Texas Civil Rights Project then initiated a series of legal maneuvers in an attempt to block the Commission from proceeding to act on the proposed rules. The groups initially succeeded at getting a state district court judge to enjoin the Commission from adopting, approving, or otherwise implementing the proposed rules. However, late on January 3, a federal district judge dismissed the case and dissolved the temporary restraining order ("TRO") after finding as follows:

"[U]nder the Texas Administrative Procedures Act, § 2001.038, neither the state court nor this Court have jurisdiction to enjoin the Commission from adopting rules at a meeting. Rather, jurisdiction is limited to determining the 'validity or applicability of a rule' once it has been adopted."

At a meeting on January 4, 2011, the Commission approved revised Preliminary Rules on the Exportation and Importation of Waste by a vote of five to two. Various amendments to the rules were accepted prior to passage, including those offered by the Vermont Commissioners which clarified issues regarding the reserving of disposal capacity at the regional commercial facility for generators from the State of Vermont.

A copy of the revised proposed rules, TCEQ hearing agenda, Commission meeting agenda and other related information may be found at <http://www.tllrwdcc.org>.

Background re License Application Status

On January 14, 2009, by a vote of 2 to 0, Texas Commission on Environmental Quality (TCEQ) Commissioners denied hearing requests and approved an order on Waste Control Specialists LLC (WCS) Radioactive Material License application, No. R04100. (See *LLW Notes*, January/February 2009, pp. 1, 9-11.) Following the completion of condemnation proceedings and the acquisition of underlying mineral rights, TCEQ's Executive Director signed the final license on September 10, 2009. (See *LLW Notes*, September/October 2009, pp. 1, 12-13.)

The license allows WCS to operate two separate facilities for the disposal of Class A, B and C low-level radioactive waste—one being for the Texas Low-Level Radioactive Waste Disposal Compact, which is comprised of the States of Texas and Vermont, and the other being for federal waste as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments.

On January 7, 2011, TCEQ Executive Director Mark Vickery approved the commencement of construction of the planned WCS low-level radioactive waste disposal facility "subject to all applicable license conditions, rules and statutes." (See *LLW Notes*, January/February 2010, pp. 19-21.) Earlier the same day, TCEQ and WCS executed a "Lease and Indemnification Agreement Concerning Low-Level Radioactive Waste Disposal in Andrews County, Texas." The document sets forth provisions relating to conveyance of the Compact Waste Disposal Facility to the State of Texas, including indemnification for any liability imposed on the state.

The WCS facility is currently authorized for the processing, storage and disposal of a broad range of hazardous, toxic, and certain types of radioactive waste. WCS is a subsidiary of Valhi, Inc.

For additional information on WCS license application, please go to the TCEQ web page at http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html or contact the Radioactive Materials Division at (512) 239-6466.

International

NRC Task Force Briefing re Lessons Learned from Japan Incident

On May 12, 2011, the U.S. Nuclear Regulatory Commission received its first 30-day briefing from the agency task force created to examine issues raised by the Fukushima reactor accident to see what lessons might be applicable to U.S. reactors. The briefing was held at 9:30 a.m. at NRC Headquarters at 11555 Rockville Pike in Rockville, Maryland.

Because of the ongoing nature of the task force review, there were no interviews afterwards.

The Commission meeting was open to public observation and was web cast at: <http://www.nrc.gov/public-involve/public-meetings/webcast-live.html>.

Background

On March 11, 2011, an estimated 8.9 magnitude earthquake and tsunami off the eastern Japanese coast caused issues at several nuclear power plants. In particular, significant cooling problems occurred at several of the Fukushima Daiichi boiling water reactors that resulted in a level seven crisis alert.

Since the events in Japan, U.S. federal agencies have been actively monitoring radioactive releases and predicting their path. In addition, the U.S. Nuclear Regulatory Commission began monitoring on a 24-hour-a-day basis the Japanese reactor events via its Headquarters Operations Center in Rockville, Maryland. The agency issued several press release stating in part that the United States is "not expected to experience any harmful levels of radioactivity" from the releases from the Japanese reactor event.

NRC has also been monitoring conditions at various U.S. nuclear power plants, spent fuel storage installations, and nuclear materials sites. Personnel at all locations have informed the NRC that conditions remain safe.

For background information on generic operations at a boiling-water reactor, including an animated graphic, please visit the NRC's web site at www.nrc.gov.

Task Force

On April 1, 2011, NRC named six senior managers and staff to a task force for examining the agency's regulatory requirements, programs, processes, and implementation in light of information from the impact of the March 11 earthquake and tsunami on the Fukushima Daiichi site in Japan.

According to the charter, the task force will conduct a near-term review and identify topics for assessment for a longer-term review. Initially, the task force will identify potential near-term actions that affect U.S. power reactors, including their spent fuel pools. Areas to be reviewed include station blackout (loss of all A/C power for reactor), external events that could lead to a prolonged loss of cooling, plant capabilities for preventing or dealing with such circumstances, and emergency preparedness. The task force will draw from ongoing NRC inspections to verify availability of plant equipment, procedures, and other resources currently required for dealing with such events. The task force will also gather information from domestic and international sources while remaining independent of any industry initiatives.

The task force expects to develop recommendations for Commission consideration on whether it should require immediate enhancements at U.S. reactors and any changes to NRC regulations, inspection procedures, and licensing processes.

(Continued on page 34)

Advisory Committee on Reactor Safeguards (ACRS)

ACRS Holds May and June Meetings

The U.S. Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards (ACRS) held public meetings on May 12-14, 2011 and then again on June 8-10, 2011 at the agency's headquarters in Rockville, Maryland.

May 2011 Meeting

During the course of the May meeting, ACRS staff discussed several issues of current interest including:

- ◆ final safety evaluation reviews associated with the license renewal application for the Salem and Hope Creek Generating Stations; and,
- ◆ the advanced reactor research plan.

June 2011 Meeting

During the course of the June meeting, ACRS staff discussed several issues of current interest including:

- ◆ draft Regulatory Guides DG-1261, "Conducting Periodic Testing for Breakaway Oxidation Behavior," DG-1262, "Testing for Postquench Ductility," and DG-1263, "Establishing Analytical Limits for Zirconium-Based Alloy Cladding;"
- ◆ the revised Safety Evaluation Report associated with the license renewal application for the Hope Creek Generating Station; and,
- ◆ the Commission paper on Level 3 probabilistic risk assessment activities.

Background

The ACRS advises the Commission, independently from the NRC staff, on safety issues related to the licensing and operation of nuclear power plants and in areas of health physics and radiation protection. Portions of ACRS meetings may be closed to discuss proprietary information, as well as organizational and personnel matters.

Complete agendas for ACRS meetings are available on the NRC web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2011/>.

U.S. Army

Army and NRC Conference re Depleted Uranium Munitions

On May 10, 2011, the U.S. Nuclear Regulatory Commission held a pre-decisional enforcement conference with representatives of the U.S. Army Installation Management Command (IMCOM) to discuss apparent violations of NRC licensing requirements at various Army installations in the United States. The conference was held at NRC's Region IV office in Arlington, Texas. The public was invited to observe and had opportunities to communicate with NRC staff after the business portion of the meeting.

In the 1960s, the Army used spotting rounds made with depleted uranium (DU) in training soldiers with the Davy Crockett weapon system. Fragments of expended rounds remain on the ground in impact areas of training ranges. There appears to be enough DU at several sites to require an NRC license to possess and monitor the material to ensure that it does not escape to the surrounding environment and pose a health risk to troops or the public.

The DU training rounds were used under an Atomic Energy Commission license that expired in 1978. After discovering spent rounds at several training locations beginning in 2005, the Army applied to NRC for a possession license in November 2008. The sites in question are located in Alaska, California, Colorado, Georgia, Hawaii, Kansas, Kentucky, Louisiana, North Carolina, Oklahoma, South Carolina, Texas and Washington.

Separately from the Army's license application, a resident of Hawaii filed a petition on March 4, 2010, requesting that the NRC take enforcement action against the Army if it found the Army possessed or released depleted uranium to the environment without a license in violation of NRC requirements.

Based on NRC's review of the information provided by the Army, it appears that the Army may be in violation of NRC regulations on the licensing of source material, which includes DU, at several Army installations. It also appears that the Army performed decommissioning activities at the Schofield Barracks in Hawaii without NRC authorization.

The conference was intended as an opportunity for IMCOM officials to provide their perspective on the apparent violation and to offer other information they believe the NRC should take into consideration in making an enforcement decision. No decision on the apparent violation or any enforcement action was made at the conference. Those decisions will be taken later by NRC officials.

U.S. Nuclear Regulatory Commission

NRC Releases Part 61 Related Documents

Technical Basis for Site Specific Rulemaking Period of Performance White Paper

The U.S. Nuclear Regulatory Commission has released the Technical Basis for the Part 61 Site-Specific Rulemaking, as well as the Period of Performance White Paper and the Draft Rule Text.

On May 18, 2011, the agency conducted a public meeting to discuss the preliminary proposed rule language and its associated regulatory basis documents.

To obtain the documents, please go to the Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html> and use the following accession numbers: ML111040401 (technical basis for site-specific rulemaking), ML111030586 (technical analysis for period of performance), ML111040419 (regulatory basis document), and ML111150205 (draft rule language).

Summary

NRC is considering amending its regulations to require low-level radioactive waste disposal facilities to conduct site-specific analyses to demonstrate compliance with the performance objectives. While the existing regulatory requirements are adequate to protect public health and safety, these amendments would enhance the safe disposal of low-level radioactive waste.

NRC is proposing additional changes to the regulations to reduce ambiguity, facilitate implementation, and to better align the requirements with current health and safety standards. In addition, NRC is making available

Federal Agencies and Committees *continued*

the rulemaking's associated regulatory basis documents.

NRC conducted a public meeting on May 18 to discuss the preliminary proposed rule language and its associated regulatory basis documents. The availability of the preliminary proposed rule language and its associated regulatory basis documents are intended to inform stakeholders of the current status of NRC's activities and solicit early public comments.

Discussion

Although NRC is inviting stakeholders to comment on the preliminary proposed rule language and its associated regulatory basis documents, these items may be subject to additional significant revisions during the rulemaking process prior to publication for formal comment as a proposed rule. NRC will consider any comments received; however, the agency will not formally respond to comments.

As appropriate, the Statements for Consideration for the proposed rule may briefly discuss any substantive changes made to the proposed rule language as a result of the comments received on this preliminary version. Stakeholders will also have an additional opportunity to comment on the rule language when it is published as a proposed rule in accordance with the provisions of the Administrative Procedures Act. NRC will respond to any such comments in the Statements of Consideration for the final rule.

NRC may post updates to the preliminary rule language on the federal rulemaking web site under Docket ID NRC-2011-0012. The site allows members of the public to set up e-mail alerts so that they may be notified when documents are added to a docket. Users are notified via e-mail at an e-mail address provided at the time of registration for the notification. Directions for signing up for the e-mail alerts can be found at <http://www.regulations.gov>. To do so, navigate to the docket folder and then click the "Sign up for E-Mail Alerts" link.

Public Meeting

On May 18, 2011, NRC conducted a public meeting to discuss preliminary proposed rule language and the regulatory basis documents. The public meeting was held from 8:30 am to 4:30 pm at the Legacy Hotel and Meeting Center at 1775 Rockville Pike in Rockville, Maryland 20852.

The meeting provided an opportunity for stakeholders to ask clarifying questions to help formulate written comments. The meeting agenda can be viewed and downloaded electronically from the NRC's Public Meeting Web Site.

Submitting Comments

Comments on the preliminary proposed rule language and the regulatory basis documents should have been postmarked no later than June 18, 2011. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

When submitting comments, please include Docket ID NRC-2011-0012 in the subject line. Comments submitted in writing or in electronic form will be posted on the NRC's web site at <http://www.nrc.gov> and on the federal rulemaking web site at <http://www.regulations.gov>.

Comments will not be edited to remove any identifying or contact information, so NRC cautions against including information that is not intended to be publicly disclosed.

Comments may be submitted by any of the following methods:

- ◆ *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search the documents filed under Docket ID NRC-2011-0012. Address questions about NRC dockets to Carol Gallagher at (301) 492-3668 or at Carol.Gallagher@nrc.gov.
- ◆ *Regular Mail:* Send comments by mail to Secretary, U.S. Nuclear Regulatory

Commission, Washington, DC 20555-0001
(Attn: Rulemakings and Adjudication Staff).

- ◆ *Electronic E-Mail:* Send comments by e-mail to Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming receipt, contact the agency at (301) 415-1677.
- ◆ *Hand Delivery:* Comments may be hand-delivered to 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 am and 4:15 pm on federal work days.
- ◆ *Facsimile:* Comments may be sent via facsimile to the Secretary of the U.S. Nuclear Regulatory Commission at (301) 415-1101.

For additional information, please contact Andrew Carrera of the NRC's Office of Federal and State Materials and Environmental Management Programs at (301) 415-1078 or at Andrew.Carrera@nrc.gov.

Comment Sought re Safety Analyses for Uranium Conversion Facilities

On May 17, 2011, the U.S. Nuclear Regulatory Commission announced that the agency is seeking public comment on a proposed rule that would require uranium conversion and deconversion facilities authorized to possess significant quantities of uranium hexafluoride (UF₆) to conduct integrated safety analyses (ISAs) and to determine whether the NRC or an Agreement State would have regulatory authority over the facility.

The proposed rule, which was published on May 17 in the *Federal Register*, would establish ISA requirements for these facilities similar to those already in place for uranium enrichment and fuel fabrication facilities. Conversion and deconversion facilities are regulated under 10 CFR Part 40 in the NRC regulations, which

governs source material (in this case, unenriched uranium). The ISA requirements for other fuel cycle facilities are contained in 10 CFR Part 70, which governs special nuclear material (enriched uranium).

Part 40 facilities using UF₆ face similar health and safety hazards as Part 70 facilities—especially chemical hazards from hydrogen fluoride (HF), a highly reactive and corrosive chemical that evolves spontaneously when UF₆ is exposed to moisture in the air. The NRC staff considers an ISA to be an effective tool for managing risk to workers and the public from chemical and radiological hazards at Part 40 facilities that are authorized to possess significant quantities of UF₆.

The proposed rule would amend 10 CFR Part 40 to require applicants or licensees with a possession limit of 2,000 kg or more of UF₆ to conduct an ISA and submit an ISA summary. NRC would assert jurisdiction over all applicants and licensees that are authorized to possess 2,000 kg or more of UF₆, even if the facility is an Agreement State. The ISA requirements would be similar to those applicable to uranium enrichment and fuel fabrication facilities.

NRC is also seeking comments on proposed guidance for licensing on implementing the new requirements.

Comments will be accepted through August 1, 2011. They may be submitted over the federal government's rulemaking website at <http://www.regulations.gov> by using Docket ID NRC-2009-0079 for the proposed rule or Docket ID NRC-2011-0080 for the proposed guidance. Comments may also be submitted by e-mail to Rulemaking.Comments@nrc.gov or by regular mail to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

NRC Hosts Fuel Cycle Information Exchange

On June 7-8, 2011, the U.S. Nuclear Regulatory Commission hosted the agency's sixth annual Fuel Cycle Information Exchange (FCIX) in Rockville, Maryland. NRC's Executive Director for Operations (EDO), Bill Borchardt, delivered the opening keynote address titled, "Driving Excellence in the Nuclear Fuel Cycle." Deputy EDO Michael Weber, who oversees the agency's materials and waste programs, delivered a second keynote, "Measuring Success in the Fuel Cycle," immediately following Borchardt's address.

NRC's Office of Nuclear Material Safety and Safeguards sponsored the FCIX, which was open to the public. The conference was intended to bring together NRC staff, industry representatives, licensees, certificate holders and the public to discuss regulatory issues related to the nuclear fuel cycle. These issues include licensing, certification and inspection of facilities for uranium conversion and deconversion, uranium enrichment, nuclear fuel fabrication, extended spent fuel storage and reprocessing.

A complete program for the FCIX may be found at <http://www.nrc.gov/public-involve/conference-symposia/fcix.html>.

License Renewals Continue to Move Forward

The U.S. Nuclear Regulatory Commission continues to process license renewal applications from various nuclear power plant operators. In that regard, the agency recently took the following actions:

- ◆ At two meetings on June 28, 2011, NRC solicited public comments regarding the agency's preliminary conclusion that there are no environmental impacts that would preclude a 20-year extension of the operating license for the Crystal River Unit 3 Nuclear Generating Plant. NRC issued a draft environmental impact statement (EIS) on the proposed license renewal for Crystal River on May 26. As part of its license renewal application, Florida Power Corporation (doing business as Progress Energy Florida, Inc.) submitted an environmental report. NRC staff reviewed the report and performed an on-site audit. Staff also considered comments made during the environmental scoping process. Based on its review, NRC staff has preliminarily determined that the "adverse environmental impacts of license renewal for Crystal River are not great enough to deny the option of license renewal for energy planning decision-makers." The Crystal River nuclear power plant is a pressurized-water reactor located on the west coast of Florida about 80 miles north of Tampa.
- ◆ On June 2, 2011, NRC issued its safety evaluation report (SER) for the proposed renewal of the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2. The SER documents the results of the NRC staff's review of the license renewal application and site audits of the plant's aging management programs to address the safety of plant operations during the period of extended operation. Overall, the results show that the applicant has identified actions that have been or will be taken to manage the effects of aging in the appropriate safety systems, structures and components of the plants, and that their functions will be maintained during the period of extended operation. PG&E submitted an application to the NRC in November 2009 to extend the plant licenses by 20 years for each unit. The plant is located in Avila Beach, California. The current 40-year operating licenses are due to expire on November 2, 2024 and August 26, 2025.

- ◆ On May 17, 2011, NRC issued its final supplemental environmental impact statement (SEIS) for the proposed renewal of the operating licenses for the Prairie Island Nuclear Generating Plant Units 1 and 2. The report concluded that there are no environmental impacts that would preclude license renewal for an additional 20 years of operation. The Prairie Island plant has two pressurized-water reactors located 28 miles southeast of Minneapolis, Minnesota. The current operating licenses expire on August 9, 2013 and October 29, 2014. Northern States Power Company submitted an application to NRC on April 11, 2008, to extend the licenses by 20 years.
- ◆ On April 21, 2011, NRC renewed the operating licenses for Palo Verde Nuclear Generating Station Units 1, 2 and 3 for an additional 20 years. The renewed licenses for the nuclear power plants—which are located in Maricopa, Arizona—will now expire on June 1, 2045 for Unit 1; April 24, 2026 for Unit 2; and November 25, 2047 for Unit 3. The decision to renew comes after thorough safety and environmental reviews of the license renewal application submitted in December 2008 by the plant's operator, Arizona Public Service Company (APS).

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 66 reactor units. In addition, NRC is currently processing 9 other license renewal requests.

For a complete listing of completed renewal applications and those currently under review, go to <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>.

ESP & COL Application Reviews Continue

The U.S. Nuclear Regulatory Commission continues to process Combined License (COL) applications.

If issued, a COL provides authorization to construct and, with conditions, operate a nuclear power plant at a specific site and in accordance with laws and regulations.

In this regard, the agency will take and/or recently took the following actions:

- ◆ On May 16, 2011, NRC and the U.S. Army Corps of Engineers (USACE), Fort Worth District, announced completion of the Final Environmental Impact Statement (FEIS) for the COL for the proposed Comanche Peak Nuclear Power Plant Units 3 and 4. In the FEIS, NRC concludes that there are no environmental impacts that would preclude issuing the COLs for construction and operation of the proposed reactors at the site, which is located near Glen Rose, Texas. USACE will use the information in the FEIS in making its federal permit decision in accordance with the Clean Water Act and Rivers and Harbors Act of 1899. Luminant Generation applied for a license to build and operate two U.S. Advanced Pressurized Water Reactors (US-APWR) adjacent to the existing Comanche Peak nuclear power plant, in September 2008.
- ◆ On May 13, 2011, NRC and USACE announced completion of the FEIS for the COL for the proposed Calvert Cliffs Unit 3 reactor. In the FEIS, NRC concludes that there are no environmental impacts that would preclude issuing the COL for construction and operation of the proposed reactor at the site, which is located near Lusby, Maryland. USACE will use the information in the FEIS in making its federal permit decision in accordance with the Clean Water Act and Rivers and Harbors Act of 1899.

Unistar applied for a license to build and operate an Areva EPR reactor adjacent to the existing Calvert Cliffs nuclear power plant in July 2007.

- ◆ On April 19, 2011, NRC and USACE announced completion of the FEIS for the COL for the proposed Virgil C. Summer Nuclear Power Plant Units 2 and 3 reactors. In the FEIS, NRC concludes that there are no environmental impacts that would preclude issuing the COLs for construction and operation of the proposed reactors at the site, which is located near Jenkinsville, South Carolina. USACE will use the information in the FEIS in making its federal permit decision in accordance with the Clean Water Act and Rivers and Harbors Act of 1899. South Carolina Electric and Gas (SCE&G) and Santa Cooper applied for a license to build and operate two Westinghouse AP1000 reactors adjacent to the existing Summer nuclear power plant, in March 2008.

Additional information on the NRC's new reactor licensing process is available on the agency's web site at <http://www.nrc.gov/reactors/new-reactor-licensing.html>.

NRC Issues Requirements to Avoid Future Legacy Sites

On June 17, 2011, the U.S. Nuclear Regulatory Commission published a final rule designed to prevent future "legacy sites" with insufficient funds for decommissioning by requiring licensees to minimize the introduction of residual radioactivity at their sites during operations. A legacy site is a facility with an owner that is unable to complete complex decommissioning work due to technical or financial restrictions. The new regulations will take effect on December 17, 2012.

New Requirements

The rule, which was published in the *Federal Register* on June 17, requires owners licensed by the NRC to keep survey records of residual radioactivity -- including the subsurface soil and groundwater -- with records important for decommissioning. It further requires certain licensees to report additional details in their decommissioning cost estimates and to amend some financial assurance mechanisms for decommissioning planning purposes.

"Facilities that process large quantities of radioactive material, especially in liquid form, have the potential for significant environmental contamination due to the scale of their operations," according to the NRC. "Over time, leaks from these facilities can lead to significant radioactive contamination of the subsurface soil and groundwater, even though the radiation doses from these releases are well below annual regulatory limits for public and occupational exposure."

NRC also notes that licensees may store more waste onsite due to the high costs of disposing of radioactive material offsite. This can increase the potential for subsurface radioactive contamination and significantly higher decommissioning costs.

Currently, licensees are required to perform surveys to verify that radioactive effluent releases are below regulatory requirements and do not pose public health hazards. However, NRC believes that existing regulations were not clear enough concerning subsurface contamination and required interpretation to apply to long-term environmental conditions. According to the agency, surveys have rarely been performed to assess the radiological hazard of chronic releases and subsurface contamination because these were not specifically defined as effluent releases, represent small fractions of the regulatory limits on effluent releases, and do not cause immediate exposure either to workers or the public.

In addition, the final rule requires more detailed reporting by licensees and tightens NRC control over certain financial instruments set aside to cover eventual decommissioning costs.

Background

NRC published a proposed rule detailing the new requirements in the *Federal Register* on January 22, 2008.

The agency received 35 comment letters on the proposed rule from states, licensees, industry organizations, environmental advocacy groups, and a member of the public.

The public comments prompted several changes in the final rule, which are detailed in the current *Federal Register* notice.

The Commission approved the final rule on November 30, 2010, directing some edits. The rule underwent review by the Office of Management and Budget prior to publication.

NRC Issues Plant Bulletin re Extreme Events

On May 11, 2011, the U.S. Nuclear Regulatory Commission announced that staff has issued a Bulletin to companies licensed to operate U.S. nuclear power plants, requesting information on how the plants are complying with requirements to deal with the potential loss of large areas of the plant after extreme events.

The agency's press release states that events at the Fukushima nuclear power plant in Japan, following the March 11 earthquake and tsunami, have highlighted the potential need for U.S. nuclear power plants to implement mitigative strategies—sometimes called “B5b” strategies. NRC is seeking information on the plants' approach to ensuring their strategies remain

effective over time. NRC continues to conclude these strategies can effectively cool down reactor cores and spent fuel pools even if a plant's normal safety systems are damaged or unavailable.

“Our initial guidance on these strategies focused on the mitigative actions themselves, but we also need to consider things such as operator training and maintaining the related equipment,” said Eric Leeds, Director of the NRC's Office of Nuclear Reactor Regulation. “These strategies and resources are an important part of the multi-layered approach the NRC requires so plants can maintain or restore their abilities for core cooling, containment integrity, and spent fuel pool cooling even if they lose large areas of the plant, for instance after an explosion or fire.”

“We'll review the plants' responses to see if they need to take any additional actions to meet our existing requirements, along with seeing what the NRC might need to do to enhance those requirements and continue to protect public health and safety,” said NRC Chairman Gregory B. Jaczko. “Our task force examining information from the Japan quake will also go over the Bulletin responses as part of its ongoing review of our requirements.”

Plants have until June 10 to respond to the Bulletin with information confirming their mitigative-strategy equipment is in place and available, as well as that the strategies can be carried out with current plant staffing. Plants have until July 11 to respond to the Bulletin with further information in areas including:

- ◆ how essential resources are maintained, tested and controlled to ensure availability;
- ◆ how strategies are re-evaluated if plant conditions or configurations change; and
- ◆ how arrangements are reached and maintained with local emergency response organizations.

Plant management must guarantee under oath that all responses to the Bulletin are accurate and complete.

For additional information, please see NRC Bulletin 2011-01, "Mitigating Strategies," on the NRC website and via the agency's electronic document database, ADAMS, by entering "ML111250360" in the ADAMS search engine.

Inspections at Nuclear Plants Prompt Corrective Actions

On May 13, 2011, the U.S. Nuclear Regulatory Commission began issuing reports to the nation's 104 operating nuclear power plants regarding inspections of the plants' abilities to deal with power losses or damage to large areas of a reactor site following extreme events.

"Our inspectors found all the reactors would be kept safe even in the event their regular safety systems were affected by these events, although a few plants have to do a better job maintaining the necessary resources and procedures," said Eric Leeds, Director of the NRC's Office of Nuclear Reactor Regulation. "As with all our inspections, we're making available to the public all the information not related to security issues."

NRC carried out the inspections in the aftermath of the March 11 earthquake and tsunami in Japan and the resulting damage to the Fukushima nuclear power plant. NRC directed its resident inspectors at every U.S. nuclear power plant to examine several areas, including the plants' mitigative strategies, sometimes called "B5b" strategies. NRC regulations call for these strategies to ensure plants can effectively cool down reactor cores and spent fuel pools following large fires, explosions or other events. Resident inspectors also examined the plants' ability to deal with: the loss of all alternating-current electricity sources; major flooding events; and fires and flooding combined with earthquakes (although this combination is not covered by existing requirements).

NRC will use its Reactor Oversight Process to further evaluate the inspection results and ensure any issues are fixed. Examples of inspection findings include equipment that would not start when tested and mitigative equipment being used for other purposes at the plant or being stored in potentially vulnerable areas.

Because the agency set May 13 as the target date for completion of these inspection reports, the individual reports are being issued as they become available. Every plant's inspection report will soon be available in one place on the NRC's website. NRC hopes to aggregate the information in these reports for public availability shortly.

NRC Holds Public Meeting re Seismic Review of U.S. Nuclear Plants

On May 18, 2011, the U.S. Nuclear Regulatory Commission held a public meeting to discuss the information and analysis needed for an updated understanding of seismic hazards at U.S. reactors. The public was invited to participate at designated points in the agenda.

During the meeting—which was held at the agency's headquarters in Rockville, Maryland—NRC staff provided an update on Generic Issue 199 (GI-199), which over the past few years has been examining updated seismic models and information for Eastern and Central U.S. nuclear power plants. GI-199 continues to conclude the plants can safely withstand earthquakes at their sites.

During the meeting, staff focused on how to develop the best available methods for evaluating that information, as well as considered strategies for conducting the work as efficiently as possible.

NRC staff will consider information from the meeting in preparing a Generic Letter regarding GI-199 for later this year. The letter is expected to ask U.S. nuclear power plants to re-evaluate their seismic hazards.

Additional information may be found at www.nrc.gov.

NRC Continues Emergency Procedure Exam at Nuclear Plants

On June 6, 2011, the U.S. Nuclear Regulatory Commission issued inspection results for the 104 operating U.S. nuclear power reactors, regarding their guidelines for continuing to protect the public even if accidents were to damage their reactor cores.

“While overall we believe plants are safe and all of the NRC’s efforts aim to ensure the plants never need to use these guidelines, we are concerned that our inspectors found many of the plants have work to do in either training their staff on these procedures or ensuring the guidelines are appropriately updated,” said Eric Leeds, Director of the NRC’s Office of Nuclear Reactor Regulation.

NRC carried out the Severe Accident Management Guideline (SAMG) inspections at the request of the agency task force examining the lessons to be learned from the March 11 earthquake and tsunami in Japan and the resulting damage to the Fukushima nuclear power plant. NRC directed its resident inspectors at every U.S. nuclear power plant to examine the plants’ SAMGs, which are meant to contain or reduce the impact of accidents that damage a reactor core. All plants put these guidelines in place voluntarily in the late 1990s.

The resident inspectors examined where the plants keep the SAMGs, how the guidelines are updated and how the plants train their personnel to carry out the guidelines. The inspectors found that all plants have implemented the guidelines, with 97 percent of the plants keeping SAMG documents in their Technical Support Center, generally considered the best location for properly implementing the guidelines. The inspectors found SAMGs in 89 percent of plant control rooms and in 71 percent of plant Emergency Operations Facilities. Only 42 percent of the plants, however, presently include SAMGs in their periodic review/revision procedures. The inspectors found that staff at 92 percent of the plants received initial training on SAMGs. When examining how the plants exercise carrying out SAMGs, the inspectors found only 61 percent of the plants periodically include the guidelines in their emergency drills.

NRC’s task force will incorporate the SAMG inspection results into its short-term review to help determine if any immediate changes to NRC requirements are called for in light of events at Fukushima. The inspection results will also help inform the NRC’s long-term review of possible revisions to agency licensing and oversight processes.

NRC Issues Summary of Plant Inspections

On May 20, 2011, the U.S. Nuclear Regulatory Commission issued a summary of its inspectors' recent examination of the nation's 104 operating nuclear power plants' abilities to deal with power losses or damage to large areas of a reactor site following extreme events.

The inspections reaffirm that every plant has the capability—including the use of so-called “B5b” strategies that were developed in response to agency orders after the September 11 terrorist attacks to maintain reactor safety following large explosions or fires—to effectively cool down reactor cores and spent fuel pools following such events. Out of 65 operating reactor sites, 12 had issues with one or more of the requirements during the inspections—many of these discrepancies deal with training. Three of the 12 sites have already resolved their issues and the remaining sites are actively working to resolve them.

“Our resident inspectors did a good job spotting problems as well as helping the plants identify areas for improvement,” said NRC Chairman Gregory Jaczko. “The plants’ responses to the Bulletin we issued earlier this month will give us additional detail to ensure they are fully complying with our regulations to protect public health and safety.”

NRC’s inspectors examined the plants’ B5b strategies, as well as plans for dealing with the effects of flooding or the loss of all the plant’s alternating-current power (a station blackout). The inspectors found nine sites had issues regarding some details of their B5b strategies, while three sites had issues with their strategies for dealing with a station blackout. Two sites had issues with strategies for dealing with extreme flooding events. None of these issues undermine the plants’ abilities to respond to extreme events.

NRC carried out the inspections in the aftermath of the March 11 earthquake and tsunami in Japan, and the resulting damage to the Fukushima nuclear power plant. NRC will use its Reactor Oversight Process to further evaluate the inspection results and ensure any remaining issues are fixed. Staff will also review responses to a Bulletin requesting information on how the plants are complying with requirements to deal with the potential loss of large areas of the plant after extreme events. The agency task force that is examining what lessons can be learned from events at Fukushima will also review every inspection report, currently available on the NRC’s web site at www.nrc.gov.

(Continued from page 23)

The task force briefed the Commission on the status of the review during public meetings on May 12 and June 16. Recommendations will be reported in a July 19 Commission meeting, which will also be open to the public. In addition, the report will be made available to the public.

The task force charter is available through the NRC’s ADAMS electronic document database by entering ML 11089A045 under the “Simple Search” tab at <http://wba.nrc.gov:8080/ves/>.

For updated information on seismic and tsunami issues in general, please go to <http://www.nrc.gov/japan/faqs-related-to-japan.pdf>.

Additional NRC information related to the March 11 earthquake and tsunami is available at <http://www.nrc.gov/japan/japan-info.html>.

Additional information sources include:

USAID: www.usaid.gov

U.S. Department of State: www.state.gov

Federal Emergency Management

Agency: www.fema.gov

White House: www.whitehouse.gov

Nuclear Energy Institute: www.nei.org

International Atomic Energy

Agency: www.iaea.org/press

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- Government Printing Office (to order entire *Federal Register* notices) (202) 512-1800
- NRC Public Document Room (202) 634-3273
- Legislative Resource Center (to order U.S. House of Representatives documents) (202) 226-5200
- U.S. Senate Document Room (202) 224-7860

by internet

- NRC Reference Library (NRC regulations, technical reports, information digests, and regulatory guides).....www.nrc.gov
- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800) 334-2405 or e-mail (leave subject blank and type help in body of message).....listserv@unixmail.rtpnc.epa.gov
- EPA • (for program information, publications, laws and regulations) www.epa.gov
- U.S. Government Printing Office (GPO) (for the Congressional Record, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases)..... www.access.gpo.gov
- GAO homepage (access to reports and testimony) www.gao.gov

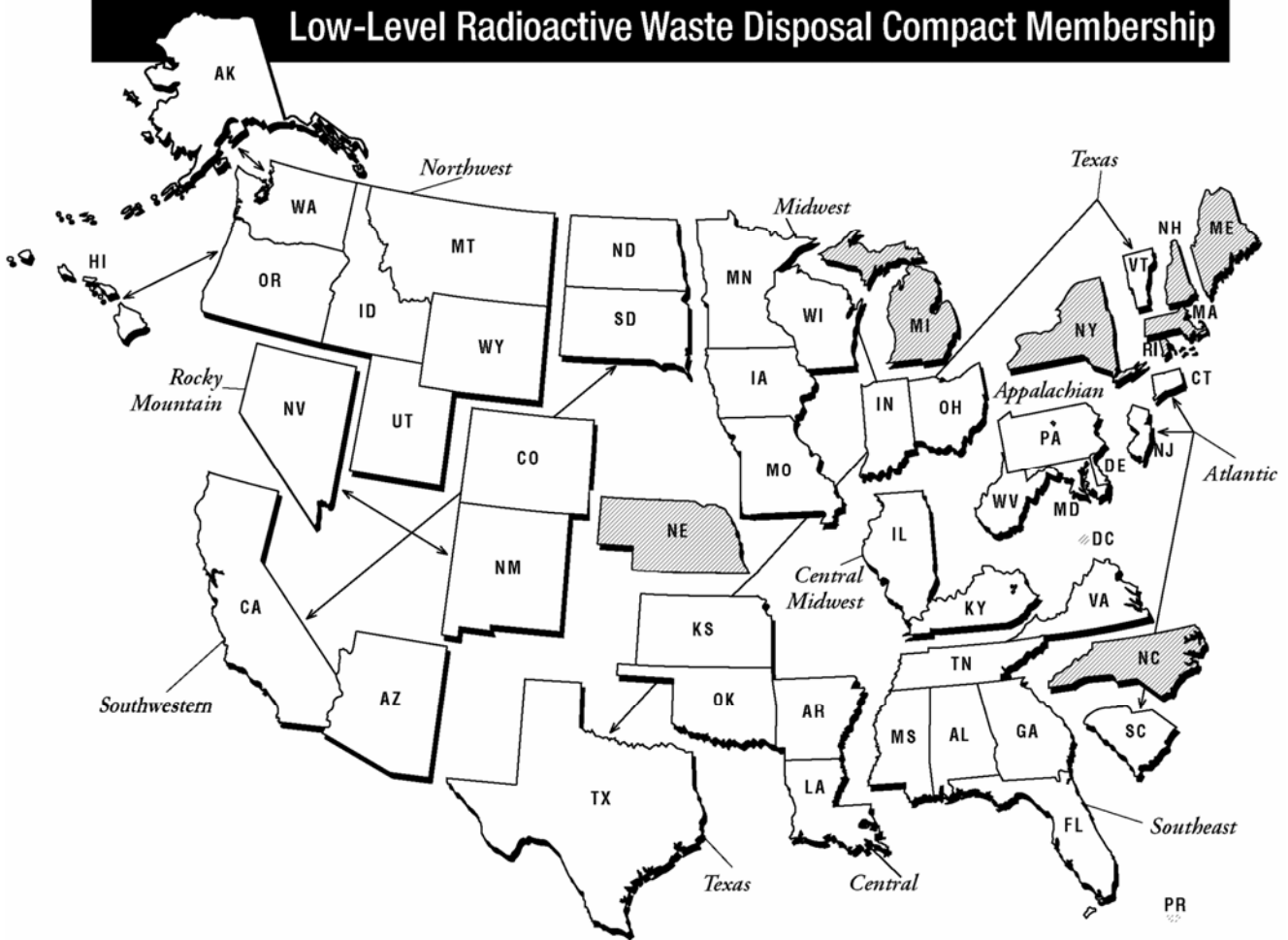
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

Accessing LLW Forum, Inc. Documents on the Web

LLW Notes, *LLW Forum Contact Information* and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and membership information are also available on the LLW Forum web site at www.llwforum.org. The *Summary Report* and accompanying Development Chart have been available on the LLW Forum web site since January 1997.

As of March 1996, back issues of these publications are available from the National Technical Information Service at U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or by calling (703) 605-6000.

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania
West Virginia

Atlantic Compact

Connecticut
New Jersey
South Carolina

Central Compact

Arkansas
Kansas
Louisiana
Oklahoma

Central Midwest Compact

Illinois
Kentucky

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington
Wyoming

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
California
North Dakota
South Dakota

Texas Compact

Texas
Vermont

Unaffiliated States

District of Columbia
Maine
Massachusetts
Michigan
Nebraska
New Hampshire
New York
North Carolina
Puerto Rico
Rhode Island