

MONITOR

RADWASTE

MONITOR

...insight from the inside on government and commercial radioactive waste management

Volume 3 No. 44

December 27, 2010

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SEE YOU NEXT YEAR!

*The next issue of **RadWaste Monitor** will be on your desk Jan. 10. Please note, the offices of **EXCHANGEMONITOR PUBLICATIONS** will be closed from Dec. 24 through Jan. 2. Happy Holidays.*

WCS SET TO BEGIN CONSTRUCTION ON DISPOSAL FACILITY AT LAST

When the 10-day notice period on its license amendment is up Dec. 27, Waste Control Specialists will be able to break ground—finally—on its disposal cell to serve radioactive waste generators in the Texas and Vermont Compact. The Texas Commission on Environmental Quality issued the notice in the Dec. 17 *Texas Register* for a minor amendment WCS applied for in January 2010, paving the way for full construction to begin. The company had already begun pre-construction activities in areas outside the perimeter of the Compact disposal facility, but next week all construction activities will be allowed to commence. “We do plan to be working that week after Christmas,” WCS spokesman Chuck McDonald told *RW Monitor* last week. “We are looking at a 10-to-11 month time period, so we’re hoping to start now and be complete late next year. We hope to be disposing of waste before the end of 2011.”

Construction Faced Delays on Multiple Fronts

WCS was issued a draft disposal license by TCEQ in January 2009, a document that was finalized in September 2009. In January 2010, WCS filed an amendment application requesting revised configuration of the disposal facilities, changes to planned facility construction, and modifications to the site environmental monitoring program. After months of back and forth, TCEQ made the notice of its approval Dec. 17. Additionally, after a protracted legal battle that delayed the process for more than a year, Andrews County Commissioners in November authorized the issuance of \$75 million in bonds to fund construction. However, it remains to be seen if the Texas Compact Commission will vote to adopt rules that would allow WCS to import out-of-Compact waste to its facility (*see related story*), something WCS has said it will need to be financially viable (*RW Monitor*, Vol. 2 No. 27).

—Sarah Anderson

NRC STAFF SET TO SUBMIT MEMO ON PART 61 REVISIONS

The Nuclear Regulatory Commission staff is set to submit a paper to the Commission that provides recommendations on how the agency should approach the overhaul of the low-level radioactive waste classification system. In a July 1 Staff Requirements Memo, NRC Commissioners directed staff to prepare an outline of “staff’s approach to initiate activities related to a risk-informed, performance-based comprehensive revision to the waste classification system in 10 CFR Part 61, including the resources and the timeline for completing the rulemaking” by Dec. 28 of this year (*RW Monitor*, Vol. 3 No. 23). “It is in the management concurrence stage, so it is on track” to be submitted by the end of the year, Larry Camper, director of the NRC’s Division of Waste Management & Environmental Protection, told *RW Monitor* last week. Camper said the paper will be publicly available in January.

The prospect of overhauling how the NRC classifies low-level radioactive waste came about when the Commission considered how to dispose of unique waste streams like depleted uranium, which grows increasingly radioactive over time. In a March 2009 memo, NRC Commissioners initiated a rulemaking for DU and other waste streams unaccounted for in the original Part 61 system, and also directed staff to prepare for a revision of the agency’s classification system (*RW Monitor*, Vol. 2 No. 7). The Commission recently voted to include the issue of disposing of blended waste to the ongoing unique waste stream rulemaking (*see related story*), which will continue in parallel with any revision to Part 61, though the changes made to the waste classification system could eventually alter the regulatory approach to those waste streams (*RW Monitor*, Vol. 3 No. 35). Previously, Camper has said a conservative timeline estimate for finalizing a Part 61 overhaul would be six to eight years (*RW Monitor*, Vol. 3 Nos. 1 & 2).

Camper said he anticipates that the paper staff will turn in next week will serve as the basis for further direction from the Commission. That direction would be the focus of the

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RadWaste Monitor is a weekly publication (50 issues a year) providing news and intelligence on radioactive waste management, including: LLRW Disposal, Storage & Treatment; Decommissioning & Decontamination, Rad Material Recycling; GTCC & TRU Waste; HLW and Spent Fuel Disposition; Waste Classification; FUSRAP Waste; Waste Management at New Reactors.

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NRC's scheduled joint public meeting with the Department of Energy on March 4 in Phoenix, Ariz., the day after the Waste Management Symposia 2011 conference concludes. "I think it's reasonable to expect that we'll have Commission direction by that March meeting," Camper said last week. At the March meeting, DOE will discuss its ongoing revision of its 435.1 radioactive waste classification system; any possible collaboration between the two agencies on the overhaul of their respective classification systems will be discussed at the meeting as well.

'A Spectrum of Possibilities'

NRC officials have made it clear that overhauling the waste classification system in 10 CFR Part 61 could take radioactive waste regulation in a number of different directions. "In looking at Part 61, the words 'risk-informed' and 'performance oriented' sound simple enough, but staff and the NRC will need to approach this assignment with an open mind," Camper said at the Waste Management Conference in March 2010 (*RW Monitor*, Vol. 3 Nos. 8 & 9). He emphasized that the revision of Part 61 holds "a spectrum of possibilities. For example, one end of the spectrum would be the need to conduct only a site-specific performance assessment and then let that site PA determine what waste can be disposed of at that site. At the other end of the spectrum is perhaps just going along and tweaking using current methodology." Camper added that, "On one hand the staff needs to approach looking at Part 61 with an open mind, driven by risk and good science, but also be aware that you have an established system today that works well."

But for low-level radioactive waste generators, the disposal industry, laboratories, hospitals, state Compacts, and state and federal regulatory agencies, there is fear of the potential for broad disruptions in the way the business of the back end of the nuclear fuel cycle functions. Many in the industry have called for the NRC to contemplate the impact, intended or otherwise, that a completely different regulatory structure could have on the industry. "Even though it seems obvious it is sometimes overlooked that we really do need to consider the full spectrum of implications that making changes to the framework in regards to the political realities, the economic consequences and regulatory concerns," Ralph Andersen, chief health physicist of the Nuclear Energy Institute, said at the NRC's Regulatory Information Conference, held in March. "The mantra we will likely sing over and over again in considering changes in regulatory framework ... is to not unduly restrict future development of future waste management options," Andersen said.

—Sarah Anderson

NO VOTE SCHEDULED YET ON TEXAS COMPACT IMPORT RULES

The Texas Compact Commission is running out of days to schedule a meeting to vote on its proposed import/export rule before Vermont's newly-elected governor takes office Jan. 6, potentially changing the complexion of the Commission. The import/export rules—which establish the processes Texas and Vermont generators would have to go through to get Commission approval for sending radioactive waste out of, or bringing waste in to, Compact states for management, storage, or disposal—were published in the *Texas Register* Nov. 26 for 30-day comment period. Anytime after the comment period expires Dec. 26, the Commission can schedule a meeting to address comment and vote on the rule, but as of press time, no date had been determined.

The impetus for setting up a vote late this year, or in the first days of 2011, is the election of State Sen. Peter Shumlin (D) to replace Gov. Jim Douglas (R). As governor, Shumlin could replace current Vermont Commissioners Uldis Vanags, Stephen Wark, and alternate Commissioner Sarah Hoffman. Vanags told *RW Monitor* that "someone from Gov-elect Shumlin's staff has talked with at least one commissioner from Vermont," but declined to comment any further on the nature of the discussions. The Vermont Commissioners cast two crucial votes to publish the draft import/export rule at the Compact Commission's Nov. 12, where the rule passed by a 5-2 vote. Two Texas Commissioners who voted against the rule—Bob Wilson and Bob Gregory—have been vocal opponents of moving ahead with the import/export rule at this time, and if Shumlin were to appoint two commissioners not in favor of the rule, there is a likelihood the issue would be put off indefinitely.

Waste Control Specialists, which is set to begin construction on the Compact disposal facility in Andrews, Texas this month (*see related story*), has said that without the additional disposal volumes through import, their prices would be prohibitively high when it begins operations and their facility may not be financially viable (*RW Monitor*, Vol. 3 No. 19).

Shumlin Opposes Import, Citing 'Race for Space'

Shumlin ran on an anti-nuclear platform, heading up the state Senate's vote last year to shut down Vermont Yankee in 2012. He has made comments suggesting that import of waste into the Compact would raise questions about Vermont generators would have space at the facility. Shumlin told *Vermont Public Radio* earlier this month that approving the import of radioactive waste to WCS would

result in “a race for space, and the first in wins.” Shumlin added then that, “My view is that the folks who are voting and scrambling before I become governor, frankly, to ensure that all the other states get access to our waste site are not thinking of Vermonters.”

The re-election of Texas Gov. Rick Perry (R) in November means that the six Texas Compact members he appointed in late 2008 are likely to serve their six-year terms. However, additional pressure could be put on the Commission when the Texas legislature—which meets every two years—reconvenes Jan. 11. Lawmakers in the state could attempt to change Compact law to disallow import, or refuse to adequately fund the Commission.

—Sarah Anderson

NRC WON'T SET DATES FOR RELEASE OF YUCCA SAFETY REPORTS

Staff Awaiting Action from Congress and the Commission

Nuclear Regulatory Commission staff will not set a time line for issuing critical safety reports on Yucca Mountain until the Commission and Congress provides more certainty on the proposed repository, staff told an NRC legal board last week. This summer, the staff told an NRC Atomic Safety and Licensing Board that Volume 3 of the Safety Evaluation Report would be issued in November, but last month the staff told the ASLB it would not issue the report as scheduled. The ASLB subsequently demanded an explanation from the staff for the delay, ordering that “No later than December 22, 2010, the Staff shall file a full explanation for its last minute schedule change and a full explanation of why, after so many months of preparation, the Staff cannot, at a minimum, establish a date by which it will issue Volume 3 of the SER.” The volume in question covers long-term safety of the repository after permanent closure.

In a Dec. 22 response, the staff wrote that “The timing of the Notification was due to uncertainty regarding, and the decision to await, potential Commission action on the pending adjudicatory matters and Congressional action on the FY 2011 budget. In addition, due to these uncertainties and the commencement of orderly closure, the Staff will not be issuing SER Volume 4 in December 2010. The Staff will provide the Board information regarding the issuance of remaining SER volumes after Commission and Congressional actions.”

Staff Sought ‘Authorization to Publish’ Last July

NRC staff sent Volume 3 to the director of the NRC’s Office of Nuclear Material Safety and Safeguards in July for “concurrence and authorization to publish,” according

to an Oct. 28 letter by NRC Commissioner William Ostendorff to Rep. Doc Hastings (R-Wash.). However, since the start of Fiscal Year 2011 in October, the NRC has taken the controversial position of halting all work on the repository’s license application, a shutdown outlined in the NRC’s 2011 budget request. The request has not been approved by Congress, which is currently funding the Federal government under a Continuing Resolution until March 4.

While staff is also awaiting further Commission action, all the relevant Commissioners voted months ago on the ASLB ruling that the Department of Energy could not legally withdraw the Yucca Mountain application. However, NRC Chairman Gregory Jaczko said recently that there is still no schedule as to when the Commission would issue an order. “Right now the agency is in a closeout process and as part of the closeout we are closing down our review work specifically the safety evaluation and other documents. We do have a FOIA request for some of that information that we are currently reviewing,” NRC Chairman Gregory Jaczko told *NNB Monitor* earlier this month. NRC spokesman Dave McIntyre said in November that work on the safety report “would be made public in some form without regulatory conclusions.”

Other Legal Issues Holding Up Report

In its response to the ASLB, NRC staff cited several other legal issues before the Commission that could affect the release of the safety report. “Petitions for review of LBP-10-11, the Nevada Petition seeking an order directing the Staff to suspend its work on Volume 3, and the Aiken County Motion seeking an order directing the Staff to resume its review of the LA are currently pending before the Commission. The Commission’s resolution of these matters will impact when, or if, the Staff will issue Volume 3 and remaining SER volumes.” NRC staff added that “uncertainty regarding whether future appropriations will include funding for Yucca Mountain licensing activities impacts the Staff’s ability to provide SER issuance dates, if necessary.”

—Kenneth Fletcher

NRC’S EXTENSION OF WASTE CONFIDENCE FINALIZED

The Nuclear Regulatory Commission last week finalized its revision to the Waste Confidence regulation, including its extension of approved generic on-site spent nuclear fuel storage to 60 years. The Dec. 23 *Federal Register* notice “is the completion of the agency’s revision of the waste confidence decision,” NRC spokesman Scott Burnell told

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RW Monitor last week. “This is the end of the process.” In the revised rule, the Commission finds that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations. It also finds reasonable assurance that sufficient mined geologic repository capacity will be available for disposal of spent fuel when necessary. The rule is effective on Jan. 24, 2011.

In August, the five NRC Commissioners voted unanimously to extend waste confidence. The Commission’s waste confidence determination is necessary before issuing a license for a new nuclear plant. That time frame looms as the NRC expects to grant its first combined construction-and-operating licenses for new plants in 2012. The Commission decided to update its rule on waste confidence in early 2009 to decouple the concept of waste confidence for new nuclear power plants from the progress of the Yucca Mountain geologic repository (*RW Monitor*, Vol. 2 No.14).

Previously, the waste confidence determination was made based on the Commission’s confidence that a geologic repository for spent fuel would open by roughly 2025. The revised rule “concludes that reasonable assurance exists that sufficient mined geologic repository capacity will be available when necessary to dispose of the commercial HLW and SNF originating in such reactor and generated up to that time.” The rule “reflects the Commission’s belief that it cannot have confidence in a target date because it cannot predict when the societal and political obstacles to a successful repository program will be overcome,” NRC wrote in the *Federal Register* notice. “Once those obstacles are overcome, the Commission has confidence that a repository can be sited, licensed, and constructed within 25-35 years.” The Commissioners took pains to emphasize that this finding does not indicate that the Commission has endorsed indefinite storage of SNF and HLW.

—Sarah Anderson

NRC TO ISSUE TIMELINE FOR BLENDING ACTIVITIES IN JAN.

Nuclear Regulatory Commission staff expects to post its near-term schedule on activities related to regulating blended waste in the first week of January. “We are working to get on the website in the near term the various actions, milestones and dates associated with actions the staff will need to carry out to fulfill the [staff requirements memo] on blending,” Larry Camper, director of the NRC’s

Division of Waste Management & Environmental Protection, told *RW Monitor* last week. NRC Commissioners in October determined that blended waste should be added to the agency’s ongoing rulemaking on unique waste streams, and directed staff to update other important regulatory documents related to blending (*RW Monitor*, Vol. 3. No. 36).

Fulfilling the requirements of the Commission’s directives on blending “involves many actions,” Camper said. “Because it’s associated with the revision and updating the [Branch Technical Position on Concentration Averaging]. It’s associated with certain guidance developments and so forth and co-ordinations with the ACRS.” Camper added that the milestones and dates that will be published on the website “are designed to allow the public to see all the actions that will be taken as part of the blending SRM.”

Blending Activities Launching Early 2011

Regulatory activities on deck before the NRC issues a final rule on unique waste streams—anticipated by fall 2012—will include interim guidance issued to states on how to handle blending and disposing of blended waste. After that, staff will update key technical documents, including the BTP and the 1981 Volume Reduction Policy Statement. In a Dec. 9 memo, NRC staff outlined plans to hold scoping meetings on its revision of the BTP (*RW Monitor*, Vol. 3 No. 42). “The staff plans to have a scoping meeting on these other potential revisions to the BTP in early 2011,” staff wrote. “After that, NRC’s Advisory Committee on Reactor Safeguards will review a draft, followed by public comment on a draft. The staff plans to publish the final BTP in mid-2012 after public comments are received and addressed.” Earlier this month, NRC staff said they will issue interim guidance to Agreement States on how to address proposals to blend radioactive waste by April 2011. Staff wrote that the April guidance document will “summarize its plans for implementing the Commission decision and identify opportunities for Agreement State participation.”

EnergySolutions is pursuing a strategy that would blend resin wastes at its Bear Creek facility in Tennessee, thereby allowing more waste to be classified as Class A and disposed of at its Clive, Utah, disposal facility. Waste Control Specialists is currently working with Studsvik waste to store waste that is treated by co-mingling Class B and C waste from many different utilities and volume reducing it to a homogenous and non-organic state. Eventually, WCS hopes to dispose of that Class B and C waste at its site in Texas.

—Sarah Anderson

FIRST SHIPMENTS OF WASTE TO NEW DOE MLLW CELL AT NNSS DELAYED

Preliminary shipments to the Department of Energy's new mixed low-level waste disposal cell at the Nevada Nuclear Security Site (formerly the Nevada Test Site) have been delayed until early January. "Shipments to the new mixed low level waste cell at the Nevada National Security MLLW cell have not started yet," DOE spokeswoman Jen Stutsman told *RW Monitor* last week. "The previously planned shipments were delayed due to inclement weather around the country and have been rescheduled for early January." Construction on the cell was completed Nov. 24, but no waste has yet been disposed of there.

Under an agreement with Nevada regulators, the government's old Pit 3 disposal cell—which accepted MLLW for five years—closed Nov. 30. But DOE's new permit to dispose of MLLW in the new cell went into effect the next day, Dec. 1, and the cell opened for operations Dec. 6. DOE originally estimated the replacement cell would not be completed until March 2011—potentially leaving DOE without MLLW disposal capability for several months (*RW Monitor*, Vol. 3 No. 30). NNSS is currently DOE's only disposal option for many kinds of higher activity mixed waste. DOE also pursued a parallel effort to get a five-year RCRA permit to store MLLW at NNSS, which was issued earlier this year.

—Sarah Anderson

SOUTHEAST COMPACT, N.C. SETTLE SUIT THAT REACHED SUPREME COURT

The Southeast Compact and North Carolina settled the final outstanding issues in legal battle last week, six months after the Supreme Court ruled in the case. "Both parties have requested that the remaining claims be dismissed and the lawsuit not be pursued," Kathryn Haynes, executive director of the Southeast Compact, told *RW Monitor*. "There is still some paperwork that has to be done and some approvals by the court in order for it to officially to be declared over." The Southeast Compact and its states—Alabama, Florida, Virginia, Georgia, Mississippi, and Tennessee—sued North Carolina for \$80 million in 1999 after the state accepted funds to build a radioactive waste disposal facility, then abandoned siting efforts in 1997. The case went before the Supreme Court in January 2010, and in June the Court ruled that the Compact did not specifically authorize its commission to impose monetary sanctions against party states.

The decision, though, left several other legal questions surrounding the case remained outstanding. An April 2009

Special Master report on the case left several counts against North Carolina open, saying they could not be resolved until the Supreme Court ruled. In the outstanding counts, the Southeast Compact seeks relief as an alternative to recovery for breach of contract. Since the Supreme Court ruled that North Carolina was not in breach of contract, the Compact could have revisited the three outstanding counts. The claims sought relief on claims of unjust enrichment, promissory estoppel and money had and received (*RW Monitor*, Vol. 3 No. 19). But with the Compact and North Carolina agreement last week, all legal issues surrounding the case have been resolved.

SE Compact Resolves to Move on

The Southeast Compact decided earlier this month that it does not need to pursue an amendment to its Compact language in the wake of the Supreme Court ruling (*RW Monitor*, Vol. 3 No. 41). The Dec. 7 resolution states, "with the exception of certain provisions related to facility site development, the Southeast Compact law is enforceable and provides the authority needed for the Commission to fulfill its mission and duties, including developing an alternative approach to site development." In a statement, Michael Mobley, chairman of the Commission, said, "The Supreme Court ruling brought the Commission to a new crossroads in its history. The decision raised fundamental questions about the enforceability of the compact law, the powers and authority of the Commission, and the Commission's ability to fulfill its mission and duties. Today's resolutions answer those questions and allows the Commission to move forward with fulfilling its mission."

—Sarah Anderson

NO REQUEST FOR HEARING ON ENERGYSOLUTIONS IMPORT PLANS

No requests for a public hearing have been filed in response to EnergySolutions' application to import 1,000 tons of radioactive waste from Germany for treatment, Nuclear Regulatory Commission officials said last week. The application, filed in August, would allow EnergySolutions to bring the waste—from hospitals and universities around Germany—to its Oak Ridge, Tenn. facility for volume reduction and incineration. The resulting ash would be sent back to Germany, EnergySolutions said in the application. NRC posted a notice to accept requests for a public hearing Nov. 30. "None that I know of on the German application," NRC spokesman David McIntyre said, noting there were a few days left on the commenting period.

The German waste import application is the first EnergySolutions has filed since July, when the company announced a U-turn in its international business strategy, abandoning controversial efforts to dispose of internationally generated waste at its Clive, Utah, disposal facility and instead focusing on working with other countries to facilitate their own domestic disposal options. EnergySolutions earlier this year withdrew its plans to import up to 20,000 tons of radioactive waste from Italy because of a controversy over disposing of the residuals at Clive. Following the application to import German waste there has been speculation that EnergySolutions might seek to import Italian waste for treatment and then send it back to Italy for disposal. Spokesman Mark Walker said the company's discussions with Italian officials are ongoing, but they are not talking about importing the waste to the U.S. "We are in discussions with Italian officials on how to best manage the waste regarding processing and disposi-

tion in Italy," Walker said. "The waste will stay and be disposed of in Italy."

Tisha Calabrese-Benton, a spokeswoman for the Tennessee Department of Environment and Conservation, said the state agency is not taking a position on the proposed project. "Whether or not to allow EnergySolutions to import waste to the United States for treatment is a federal policy issue, and the decision is up to the U.S. Nuclear Regulatory Commission," Calabrese-Benton said by e-mail. "The state of Tennessee, through TDEC's Division of Radiological Health, does license and inspect waste processors in Tennessee to ensure they are meeting their license requirements and the State Regulations for Protection Against Radiation. The department's role is not one of advocacy in either direction, but rather is to ensure that processors follow the letter of their licenses and the law for the protection of human health and the environment."

—Sarah Anderson

Calendar

January

17 EM PUBLS CLOSED FOR MLK JR. HOLIDAY

February

15-18

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21 EM PUBLS CLOSED FOR PRESIDENTS' DAY

27-March 3 Conference: Waste Management 2011: *Global Achievements and Challenges in Waste Management*; Phoenix Convention Center, Phoenix, Ariz.; Information: www.smsym.org.

March

8-10 Meeting: Nuclear Regulatory Commission's Regulatory Information Conference; Bethesda North Marriott Hotel and Conference Center, Bethesda, Md.; Info: <http://www.nrc.gov>.

15-16 Workshop: 2011 DOE Project Management Workshop; Holiday Inn, 625 First Street, Alexandria, VA 22314; Information: <http://management.energy.gov/oecm.htm>; Contact: John Makepeace, John.Makepeace@hq.doe.gov.

(Changes from previous Calendar in Bold)



The *RW Monitor* is a weekly publication (50 issues a year) providing news and intelligence on radioactive waste management, including: LLRW Disposal, Storage & Treatment; Decommissioning & Decontamination, Rad Material Recycling; GTCC & TRU Waste; Spent Fuel Disposition; Waste Classification; FUSRAP Waste; Waste Management at New Reactors.

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