June 8, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
PROGRESS ENERGY FLORIDA, INC.	)	Docket Nos. 52-029 and 52-030
	)	
	)	
(Combined License Application for Levy County Nuclear Site, Units 1 and 2)	)	
	)	

NRC STAFF ANSWER TO MOTION BY JOINT INTERVENORS TO AMEND CONTENTION 8

Pursuant to the Atomic Safety and Licensing Board ("Board") Initial Scheduling Order dated August 27, 2009, the Staff of the Nuclear Regulatory Commission hereby answers the "Motion by Joint Intervenors to Amend Contention 8 on So-Called 'Low-Level' Radioactive Waste and Safety Issues Associated with Extended On-Site Storage" ("Motion"), filed in the above-captioned proceeding by the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively "Joint Intervenors"). As the Staff discusses below, amended Contention 8 is inadmissible because it does not comply with the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iv) and (vi). For this reason, Staff opposes Joint Intervenors' Motion.

BACKGROUND

By letter dated July 28, 2008, Progress Energy Florida, Inc. (Progress) submitted a COL application for two AP1000 advanced passive pressurized water reactors to be located in Levy

County, Florida.[1] The *Federal Register* notice of docketing was published on October 14, 2008 (73 Fed. Reg. 60,726), and the *Federal Register* notice of hearing (Hearing Notice) was published on December 8, 2008 (73 Fed. Reg. 74,532). Joint Intervenors filed their petition to intervene on February 6, 2009.[2] On July 8, 2009, the Board issued a Memorandum and Order admitting the Joint Intervenors as a party and admitting contentions 4, 7, and 8. *Progress Energy Florida* (Levy County Nuclear Power Plant, Units 1 and 2) LBP-09-10, 70 NRC 51 (2009). The Board admitted contentions 7 and 8 as contentions of omission. *Id*. at 75. Ruling on the subsequent appeal filed by Progress, the Commission upheld the Board's admissibility determination, but narrowed the scope of contentions 7 and 8 to exclude issues pertaining to greater-than-Class-C waste. *Levy*, CLI-10-02, 71 NRC at __ (Jan. 7, 2010) (slip op. at 27).

On April 14, 2010, Joint Intervenors and Progress filed a "Joint Motion for Approval of Settlement and Dismissal of Contention 8" ("Settlement Agreement") in light of Progress' December 4, 2009 responses to Staff requests for additional information ("RAI Responses"). The parties' Settlement Agreement provided that: 1) they would jointly request dismissal of Contention 8 and 2) Progress would not oppose on the basis of timeliness an amended contention, filed within 30 days by Joint Intervenors, challenging the adequacy of the RAI Responses. The Staff was not a party to the Settlement Agreement, but did not object to it. On April 21, 2010, the Board issued an Order approving the proposed Settlement Agreement between Joint Intervenors and Progress and dismissing Contention 8. On May 14, 2010 Joint Intervenors filed the Motion that is the subject of this Answer.

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[1] Letter from James Scarola to Michael Johnson, Application for Combined License for Levy Nuclear Power Plant Units 1 and 2 (July 28, 2010) (ML082260277).

[2] Petition to Intervene and Request for Hearing by the Green Party of Florida, the Ecology Party of Florida, and Nuclear Information and Resource Service (Feb. 6, 2009).

DISCUSSION

The admissibility requirements that apply to all contentions are contained in 10 C.F.R. § 2.309(f)(1). They are extensively discussed in the Staff's initial response to the intervention petition and in the Board's ruling on contention admissibility.[3] Failure to comply with any one of these general admissibility requirements is grounds for dismissal of the contention. *See* Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

The Motion proposes to amend Contention 8 as follows:

> Progress Energy Florida's (PEF's) COL application is inadequate to satisfy 10 C.F.R. 52.79 because it assumes that class B and C radioactive waste generated by proposed Levy Units 1 and 2 will be promptly (e.g., within two years) shipped offsite, while currently there is an absence of access to a licensed disposal facility or capability to isolate the radioactive waste from the environment. The proposed amendment to the Levy County COL also fails to offer sufficient information to demonstrate the adequacy of PEF's plans for storing Class B and C radioactive waste on the Levy site if offsite disposal capacity is not available within two years. PEF's plan to postpone most of its decisions regarding how and where to store the waste (including "minimizing" the volume of the waste) until sometime after issuance of the license for Levy violates Section 52.79 and also the Atomic Energy Act's requirement that safety findings must be made before the license is issued.

Motion at 3. In essence, Joint Intervenors are proposing to amend Contention 8—originally a contention of omission—to challenge the adequacy of Progress' RAI Responses. Proposed amended Contention 8 is inadmissible because it does not demonstrate that the issue raised is

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[3] *See* NRC Staff Answer to Petition to Intervene at 6-9 (Mar. 3, 2009); *Levy*, LBP-09-10, 70 NRC at 71-73 (2009). Briefly, an admissible contention must: (1) provide a specific statement of the issue of law or fact to be raised or controverted, (2) provide a brief explanation of the basis for the contention, (3) demonstrate that the issue raised is within the scope of the proceeding, (4) demonstrate that the issue raised is material to the findings the NRC must make to support the licensing action, (5) provide a concise statement of the alleged facts or expert opinions that support the petitioner's position, and (6) provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of fact or law. 10 C.F.R. § 2.309(f)(1).

material to the findings the Staff must make to support its licensing decision or that there is sufficient information to show that a genuine dispute of material law or fact exists with Progress. 10 C.F.R. § 2.309(f)(1)(iv) and (vi). For these reasons, Joint Intervenors' Motion should be denied.

In their Motion, Joint Intervenors appear to be arguing that Progress' RAI response must contain design-level detail. Motion at 4-5. However, Joint Intervenors fail to demonstrate that such detailed information is required. In admitting original Contention 8 as a contention of omission, the Board found that, "while the . . . FSAR may discuss temporary and short term management of the LLW onsite, [it does] not confront the plausible problem of longer term management of LLW onsite (i.e., longer than 2 years)." *Levy*, LBP-09-10, 70 NRC at 123. But, neither the Board nor the Commission has concluded in this proceeding, or other proceedings with similar contentions, that NRC regulations require a contingency plan to contain the detailed design information suggested by Joint Intervenors.[4]

In its two RAI Responses,[5] Progress provided additional information indicating, among other things, that: (1) consistent with the DCD, only temporary storage facilities would be provided because the need for permanent on-site storage is not expected, RAI Response at 2; (2) if needed in the future, additional storage can be provided through the § 50.59 change

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[4] *See Levy*, CLI-10-02, 71 NRC at __ (slip op.); s*ee also Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33 (2009). In an Order discussing a contention nearly identical to Contention 8, the Commission emphasized that its decision did not "opine . . . on the scope of the requirements of 10 C.F.R. § 52.79(a)(3), including any specific time frame for which a COL applicant should address LLRW storage." *Vogtle*, CLI-09-16, 70 NRC at 38 n.27. Indeed, after describing the regulatory requirements in § 52.79 and 10 C.F.R. Part 20 relied on by the intervenors, the Commission noted that "[a]s such, the required information is tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures. However, the scope and extent of that required information on specific plans or contingency planning is not clear." *Id.* at 37.

[5] Attachment 1, Response to Request for Additional Information Letter No. 073 Related to Solid Waste Management System (ML093450353). The discussion of the RAI Responses is focused on the admissibility of proposed amended Contention 8. The Staff makes no judgment of the adequacy of the RAI response

process or a license amendment, *id*.; (3) current and future disposal and storage options are expected to accommodate Levy low-level radioactive waste ("LLRW"), *id*. at 4; and (4) temporary storage capacity can be extended for greater than two years at the expected rate of waste generation through the use of waste minimization strategies. *Id*. at 5. Progress also discussed the design and operational considerations that would be applied to such a facility and cited NRC guidance documents that would be followed. *Id.* at 2-6.

In support of proposed amended Contention 8, Joint Intervenors argue that the lack of detail in the RAI Responses with regard to "waste management and storage beyond two years" is inconsistent with the requirements § 52.79(a)(3), which provides, in relevant part, that the FSAR must include a description of "the means for controlling and limiting radioactive effluents and radiation exposure within the limits set forth in part 20 of this chapter." Motion at 4. Although the Motion does not specify which details are lacking, the supporting Declaration of Diane D'Arrigo[6] suggests that these necessary details include the design, building materials, and location of an onsite long-term storage building that is presumed necessary. Declaration at 5. Neither the Motion nor the attached Declaration, however, provide support for the assertion that § 52.79(a)(3) requires a greater level of detail than Progress has provided about how waste will be managed beyond two years.

Section 52.79(a)(3) does not require an applicant to provide detailed design information for a LLRW storage facility that is not a component of the facility to be constructed under the COL. *Southern Nuclear Operating Co*. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-08, 71 NRC __, __ (slip op. at 12-14). Rather, this provision requires only that an applicant specify the means by which radiation exposures will be kept within the limits of Part 20. *Id*. at 13. Other than to claim that "a promise to seek a license amendment after the license has been

[6] Declaration of Diane D'Arrigo in Support of Intervenors' Amended Contention 8 on So-Called "Low-Level" Radioactive Waste Safety Issues (May 14, 2010) (Attachment A to Joint Intervenors' Motion).

issued is not adequate to satisfy NRC's licensing standards," Joint Intervenors do not specifically take issue with any of the design or operational considerations specified in the Applicant's response, the guidance documents to which the Applicant's plan refers, or the feasibility of the Applicant's proposed contingency plan. Motion at 4. Rather, they simply suggest that design-level details are required. *Id*. 4-5. However, because the license application does not propose the construction of a facility for storage of LLRW, and § 52.79(a)(3) does not require such a facility, the details regarding the design of any such facility are not a required part of the COL application. As such, Joint Intervenors do not demonstrate that greater detail is material to a finding that the NRC staff must make, and also fail to raise a genuine dispute with Progress on a material issue of fact or law under § 2.309(f)(1)(vi). *See Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) (the intervenor must do more than submit bald or conclusory allegation[s] of a dispute with the applicant).

In ruling on a motion for summary disposition regarding a similar contention, in the *Vogtle* proceeding, the Board agreed that detailed, construction level information is not required under 52.79(a)(3). *Vogtle*, LBP-10-08, 71 NRC at __ (slip op.). In contrasting the level of detail required by section 52.79(a)(3) and (a)(4) that Board noted that (a)(4) explicitly requires detailed design information, while (a)(3) does not. *Id. at 13*. In light of this, the *Vogtle* Board concluded that the § 52.79(a)(3) provision that specifies that an FSAR must provide the "means for controlling and limiting radioactive effluents and radiation exposures" requires only that an applicant provide its plans for "compliance through, but not necessarily the details of, design operational organization and procedures associated with any contingent long-term LLRW facility." *Id*. Progress' RAI Responses provide a description of its plans for LLRW disposal and storage, and Joint Intervenors do not support their assertion that § 52.79(a)(3) requires more. *See* RAI Responses at 2-5. Thus, Joint Intervenors have not demonstrated that such detail is material to the Staff's licensing decision. *See* 10 C.F.R. § 2.309(f)(1)(iv). Similarly, Joint

Intervenors' unsupported assertions also do not demonstrate that a genuine dispute exists with Progress with respect to a material issue of fact or law given the absence of a requirement to include the level of detail Joint Intervenors allege is necessary.

Joint Intervenors also assert that § 52.79(a) renders unacceptable Progress' contingent plan to seek a license amendment in the event that it needs to add waste storage capacity. *Id*. Section 52.79(a) provides that an FSAR "shall include the following information at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license." But, the Motion does not explain why, given the level of information required by section 52.79(a)(3), the Commission cannot reach a final conclusion regarding the management of low-level waste at this time. As discussed above, the Joint Intervenors fail to demonstrate that such details are necessary in this COL proceeding to demonstrate compliance with Parts 20 or 52 and why those details are material to the findings the Staff must make as required by the admissibility criteria. *See Vogtle*, LBP-10-08, 71 NRC at __ (slip op. at 13-14).

In sum, the Joint Intervenors assert that a more detailed plan for extended onsite LLRW storage is necessary, but they have identified no regulatory provision requiring the Levy COL application to contain such detail. In particular, where Progress has emphasized that it does not anticipate that it will ultimately employ LLRW storage beyond what is provided in its referenced reactor design (RAI Response at 2), the Joint Intervenors have failed to identify any requirement that the Applicant's plan for such contingency storage contain more information than what is provided in the Applicant's description, or that it must encompass final construction-level design details. The Motion thus fails to demonstrate that the requested detail is material to the Staff's finding and fails to specifically contradict the information contained in the Applicant's response. *See* 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Accordingly, the amended contention should not be admitted.

CONCLUSION

For the above reasons, the Board should deny Joint Intervenors' Motion.

Respectfully Submitted,

/Signed (electronically) by/
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Dated at Rockville, Maryland
this 8th day of June, 2010

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Levy County Nuclear Site, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO MOTION BY JOINT INTERVENORS TO AMEND CONTENTION 8, have been served upon the following persons by Electronic Information Exchange this 8th day of June, 2010:

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Progress Energy

Serial: NPD-NRC-2009-241
December 4, 2009

10CFR52.79

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555-0001

LEVY NUCLEAR PLANT, UNITS 1 AND 2
DOCKET NOS. 52-029 AND 52-030
RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION LETTER NO. 073 RELATED TO SOLID WASTE MANAGEMENT SYSTEM

Reference: Letter from Donald Habib (NRC) to Garry Miller (PEF), dated November 4, 2009, "Request for Additional Information Letter No. 073 Related to SRP Section 11.4 for the Levy County Nuclear Plant, Units 1 and 2 Combined License Application"

Ladies and Gentlemen:

Progress Energy Florida, Inc. (PEF) hereby submits our response to the Nuclear Regulatory Commission's (NRC) request for additional information provided in the referenced letter.

A response to the NRC request is addressed in the enclosure. The enclosure also identifies changes that will be made in a future revision of the Levy Nuclear Plant Units 1 and 2 application.

If you have any further questions, or need additional information, please contact Bob Kitchen at (919) 546-6992, or me at (727) 820-4481.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2009.

Sincerely,

John Elnitsky
Vice President
Nuclear Plant Development

Enclosure

cc : U.S. NRC Region II, Regional Administrator
Mr. Brian C. Anderson, U.S. NRC Project Manager

Progress Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, FL 33733

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NRO

Levy Nuclear Plant Units 1 and 2
Response to NRC Request for Additional Information Letter No. 073 Related to SRP Section 11.4 for the Combined License Application, dated November 4, 2009

NRC RAI #	Progress Energy RAI #	Progress Energy Response
11.04 -1	L-0678	Response enclosed – see following pages
11.04 -2	L-0679	Response enclosed – see following pages

NRC Letter No.: LNP-RAI-LTR-073

NRC Letter Date: November 4, 2009

NRC Review of Final Safety Analysis Report

NRC RAI NUMBER: 11.04-1

Text of NRC RAI:

In Standard COL 11.4-1, the applicant states that "no additional onsite radwaste storage is required beyond that described in the DCD." Please explain why this statement is included or remove it.

PGN RAI ID #: L-0678

PGN Response to NRC RAI:

The referenced statement is provided to address the portion of the COL information item in DCD Subsection 11.4.6 that states "In the event additional onsite storage facilities are a part of Combined License plans, this program will include a discussion of conformance to Generic Letter GL-81-038" and the statement in Regulatory Guide 1.206 page C.III.1-137 "In the event that additional onsite storage facilities are part of COL plans, include a discussion of conformance to GL-81-038. Supplemental guidance is provided in SECY-94-198." The statement is intended to confirm that additional onsite storage facilities are not expected to be needed for LNP 1 & 2. Accordingly, the statement establishes that no discussion of permanent on-site storage facilities is necessary in the COL.

The statement in Standard COL 11.4-1 also clarifies that although the AP1000 design has provisions for the temporary storage of radwaste prior to shipment for disposal, such waste is normally promptly disposed of offsite at licensed processing and disposal facilities. In the event that an offsite facility is not available to accept Class B and C waste, at least two years of storage is available within the facilities described in the DCD, considering routine operations and anticipated operational occurrences. In the event that an offsite facility is not available to accept Class B and C waste, a waste minimization plan will also be implemented. This plan will consider strategies to reduce generation of Class B and C waste, including reducing the in-service run length of resin beds, as well as resin selection, short-loading, and point-of-generation segregation techniques. Implementation of these techniques could substantially extend the capacity of the Class B and C storage within the facilities identified in the DCD. If additional storage capacity for Class B and C waste is required; further temporary storage would be developed in accordance with NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A; therefore, the design does not provide for the permanent onsite storage of radwaste. Since there are no facilities currently licensed by the NRC for disposal of Greater Than Class C (GTCC) LLRW, storage of GTCC would be similar to the methodology used for storage of spent fuel.

As discussed above, LNP 1 & 2 plans to ship all processed or temporarily stored radwaste offsite for disposal; therefore, there is no anticipated need for additional onsite radwaste storage beyond the temporary storage described in the DCD. The referenced statement reflects the underlying analyses of radioactive sources and dose assessments, and assesses

the radiological impact of normal operation with conservative, bounding analyses. Progress Energy understands that LNP 1 & 2 will be licensed to operate within that licensing basis, which means that the accumulation of low-level radioactive waste in excess of the dose assessments is hypothetical at this time. To the extent that additional storage could be needed sometime in the future, the existing regulatory framework as described in NRC Regulatory Issue Summary 2008-32, Interim Low-Level Radioactive Waste Storage at Reactor Sites would allow Progress Energy to conduct written safety analyses under 10 C.F.R. § 50.59. If the additional storage does not satisfy 10 C.F.R. § 50.59, a license amendment would be required.

Associated LNP COL Application Revisions:

The following change will be made to the LNP FSAR in a future revision:

COLA Part 2, FSAR Chapter 11, Subsection 11.4.6 will be revised to add two new paragraphs at the end of STD COL 11.4-1:

Add the following at the end of STD COL 11.4-1 :

All packaged and stored radwaste will be shipped to offsite disposal/storage facilities and temporary storage of radwaste is only provided until routine offsite shipping can be performed. Accordingly, there is no expected need for permanent on-site storage facilities at LNP 1 & 2.

If additional storage capacity for Class B and C waste is required, further temporary storage would be developed in accordance with NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A. To the extent that additional storage could be needed sometime in the future, the existing regulatory framework would allow Progress Energy to conduct written safety analyses under 10 C.F.R. § 50.59. If the additional storage does not satisfy 10 C.F.R. § 50.59, a license amendment would be required.

Attachments/Enclosures:

None.

NRC Letter No.: LNP-RAI-LTR-073

NRC Letter Date: November 4, 2009

NRC Review of Final Safety Analysis Report

NRC RAI NUMBER: 11.04-2

Text of NRC RAI:

In Section 11.4 of NUREG-1793, the staff states that if a need for onsite storage of low-level waste has been identified beyond that provided in AP1000 Standard Design because of unavailability of offsite storage, the applicant should submit the details of any proposed onsite storage facility to the NRC. Please provide any arrangements for offsite storage for low-level wastes or submit plans for onsite storage.

PGN RAI ID #: L-0679

PGN Response to NRC RAI:

Progress Energy currently employs agreements with offsite facilities for the disposal of radwaste from its operating nuclear plants. It is expected that these same or additional offsite facilities (current or future) would be utilized for radwaste from LNP Units 1 & 2. Currently, facilities are available in Texas and Utah for the disposal / storage of radwaste from LNP 1 & 2. LNP Units 1 & 2 are not scheduled to load fuel and begin operation for several years. Because the Low-Level Radioactive Waste Policy Amendments Act of 1985 requires that disposal capacity be available for all types of LLRW generated by Atomic Energy Act licensees, Progress Energy has confidence that disposal facilities will be available that would accept the Class A, B, and C waste generated by these plants when needed. Since there are no facilities currently licensed by the NRC for disposal of Greater Than Class C (GTCC) LLRW, storage of GTCC would be similar to the methodology used for storage of spent fuel.

In the event that off-site shipping is disrupted or facilities are not available to accept radwaste after LNP Units 1 & 2 become operational, as described in DCD Section 11.4.2.1 paragraph ten, temporary storage capability on-site is available for greater than two years at the expected rate of radwaste generation and greater than one year at the maximum rate of radwaste generation. During this period, the implementation of additional waste minimization strategies could extend the duration of temporary radwaste storage capability. The waste minimization strategy would include techniques to reduce generation of Class B and C waste such as reducing the in-service run length of resin beds, as well as resin selection, short loading, and point-of-generation segregation methods. If additional temporary radwaste storage is eventually needed, then on-site facilities could be constructed utilizing the design guidance provided in NUREG-0800, Standard Review Plan Chapter 11 Radioactive Waste Management Appendix 11.4-A, Design Guidance for Temporary Storage of Low-Level Radioactive Waste.

LNP Units 1 & 2 plans to ship all packaged and stored radwaste to offsite disposal or storage facilities. In the event disposal capacity is disrupted, Progress Energy would only temporarily store radwaste and would use off-site storage, if necessary, until routine disposal could be resumed.

Associated LNP COL Application Revisions:

The following change will be made to the LNP FSAR in a future revision:

COLA Part 2, FSAR Chapter 11, Subsection 11.4.2.4 will be revised to add a new subsection with the LMA of STD COL 11.4-2 to read:

Add the following after DCD Subsection 11.4.2.4.2:

11.4.2.4.3 Temporary Storage of Low-Level Radioactive Waste

In the event that off-site shipping is disrupted or facilities are not available to accept radwaste when LNP Units 1 & 2 become operational, as described in DCD Section 11.4.2.1 paragraph ten, temporary storage capability on-site is available for greater than two years at the expected rate of radwaste generation and greater than one year at the maximum rate of radwaste generation. During this period, the implementation of additional waste minimization strategies could extend the duration of temporary radwaste storage capability. Since there are no facilities currently licensed by the NRC for disposal of Greater Than Class C (GTCC) LLRW, storage of GTCC would be similar to the methodology used for storage of spent fuel.

If additional temporary radwaste storage is eventually required, then on-site facilities could be constructed utilizing the design guidance provided in NUREG-0800, Standard Review Plan Chapter 11 Radioactive Waste Management Appendix 11.4-A, Design Guidance for Temporary Storage of Low-Level Radioactive Waste.

Attachments/Enclosures:

None.