

From: <Judynwtf@aol.com>
To: <mtl@nrc.gov>
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Subject: Comments on the YMRP NUREG 1804

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Janet Kotre said that I can send this Corel file to you and my comments will get in for the deadline today. Please let me know if you cannot open the file or if I need to do anything else.

Thanks very much,

Judy Treichel

Judy Treichel, Executive Director
Nevada Nuclear Waste Task Force
4550 W. Oakey Blvd., Suite 111
Las Vegas, NV 89102
702-248-1127, FAX 702-248-1128
http://www.nvantinuclear.org/

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H. Beranek (AFB)

NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

Alamo Plaza
4550 W. Oakey Blvd., Ste. 111
Las Vegas, NV 89102
Phone: 702-248-1127
Fax: 702-248-1128
Toll Free: 800-227-9809

Non-profit/Public Advocacy
Judy Treichel, Exec. Director
E-mail: judynwtf@aol.com
Web: www.nvantinuclear.org

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General Comments on the Yucca Mountain Review Plan NUREG-1804 – Revision 2

The Yucca Mountain Review Plan does not insure public safety–

The public understands the issuance of a license by the Nuclear Regulatory Commission to be a guarantee of public health and safety. In the Yucca Mountain Review Plan introduction it is stated that the Department of Energy (the licensee) must show that the proposed action is safe.

The dictionary definition and commonly accepted meaning of the word “safe” is: free from danger and involving no risk. That is the public’s understanding of those words and people expect that the federal agencies who serve the public use words and define terms in the same way they do. In the YMRP there is a Glossary where words and terms are defined. There is no definition of “safe” or “safety;” therefore it is assumed that the dictionary definitions are applicable.

When Yucca Mountain was selected as the sole site to be studied for suitability as a repository site, Nevadans were promised by officials of the DOE that: “if its not safe, we won’t build it.” The people were assured that the site would have to meet all of the regulations, standards, and rules that were in place at that time. The DOE often referred citizens to the site suitability guidelines which included qualifying and disqualifying conditions. The NRC licensing rule with sub-system requirements was said to prove that the site could only be licensed if safety was assured. Those important provisions have been eliminated. Decisions now will be based on “performance assessments.” The DOE has redefined “safe” to mean “legal,” or “assumed to satisfy regulations.”

Section 3.3 states: “This review determines with reasonable assurance whether the U.S. Department of Energy has committed to having a physical protection system that provides high assurance that activities involving high-level radioactive waste do not present an unreasonable risk to the public health and safety.” The terms: “reasonable assurance, high assurance, and unreasonable risk” are subjective and in the public’s view, create a smoke screen. Exactly what is a “reasonable risk” to public health and safety? As stated earlier, the definition of “safe” is:

involving no risk and since there is **NO** performance history for a high-level nuclear waste geologic repository, there is no solid basis for determining probability and consequence in order to know with *any* assurance to what extent there are either reasonable or unreasonable risks.

Section 1.4 Components of Each Review Section states that "...the staff may not carry out in detail all the review steps listed in each YMRP section...." Staff reviewers are allowed to "select and emphasize particular aspects from each YMRP section." The YMRP appears to be a menu of possible options, rather than a plan for a thorough regulatory review. For the NRC to review a Yucca Mountain license application, or any geologic repository license application, using a "risk-informed, performance-based" decision process is completely disingenuous and a disservice to the public.

The YMRP ignores transportation–

One of the most important public issues regarding a Yucca Mountain repository is transportation. The public justification for DOE's use of TSPA and NRC's use of PA is that Yucca Mountain will be a "repository system." If NRC is considering the licensing of a "repository system" it implies that **all** aspects of the project should be reviewed in the licensing process. If, as stated throughout the YMRP, the Yucca Mountain Review Plan is risk-informed, performance based, transportation is one of the only parts of the repository project where there is enough past data and knowledge to employ risk-informed, performance based principles. If NRC is to approve and license transport casks, there must be an analysis of where and how they will be used in the YMRP. Section 3.3 Physical Protection Plan discusses the need to provide protection during all activities involving high-level radioactive waste including the threat of possible terrorism. This certainly would require the YMRP to consider transportation.

The public is not being fully included in DOE/NRC interactions –

In a letter dated January 22, 2001, Chairman Meserve wrote to Judy Treichel, Executive Director of the Nevada Nuclear Waste Task Force: "The NRC staff strives to conduct its interactions with DOE in an open and objective manner." OCRWM Director Margaret Chu recently discussed frequent interactions between her staff and NRC staff that have been held with no public notice or invitation. For the regulator and potential applicant to do business excluding others breeds distrust. DOE and NRC talk at length about creating public trust and confidence while in practice it appears that they are engaging in clandestine interchange. The YMRP must assure that no such private communications will take place.

The YMRP uses misleading terminology –

The YMRP, in Section 1.2.2 refers to “open items.” The Nevada Nuclear Waste Task Force has had communication and exchanges with the NRC regarding the terms: “open, closed and closed-pending.” In the YMRP it appears that “open items” will become “confirmation items.” This is another word game in which we fear that the DOE will be accommodated inappropriately. How can we be sure that the licensing process will not decide to create the term: “confirmation pending?” In Section 3.5.3, Acceptance Criterion 3 includes “Additional site characterization work necessary to increase basic scientific understanding of any significant FEP; ...” Why would a license application ever be accepted if the applicant had not finished site characterization work or did not have a full basic scientific understanding of *any* feature, event, or process? How would a doctor, lawyer or even student driver get a license if they had not finished their education? Such licenses only affect a small number of people for a portion of a human lifetime. A repository system (including transportation) could impact people nationwide in the short term, and Nevadans for millennia.

DOE title and control of the Yucca Mountain repository area–

Section 3.1.2 discusses regulation of land uses around the repository operations area. Where, in the YMRP, is the requirement for proof of DOE ownership and title to the land? Yucca Mountain is located within the treaty territory of the Western Shoshone Nation. A land purchase, also within the treaty area, in Northern Nevada, was not completed because the title was found to be “clouded.” Yucca Mountain is no different.

Waste retrievability–

The Nuclear Waste Policy Act requires that the waste in Yucca Mountain remain retrievable for 50 years or until the repository is closed. When members of the public express doubts about the repository program, very frequently they are told that the fact that the waste **will be** retrievable, any problem or mistake will be reversible. Because the “retrievability option” is used as the basis for increasing and assuring public confidence, the YMRP must require that DOE physically prove that they are able to remotely emplace and retrieve disposal canisters. Having a discussion, scenarios, and methodologies on paper cannot replace physical demonstrations. It is unreasonable to assume that problems can be identified and solved by modeling and analysis. From a public standpoint, licensing of anything requires demonstration of ability.

The Nevada Nuclear Waste Task Force believes that the YMRP has deficiencies that must be corrected. Unclear and subjective terms must be eliminated. There must clear, rigorous and required criteria to be met, not review options. The words “safe” or “safety” must not be used if they do not mean what is publicly understood. Transportation must be fully considered and needs to be analyzed in an NRC EIS. All DOE/NRC interactions must be noticed and

publicly accessible both during the preclicensing and licensing periods. And in the absence of any performance history, the YMRP **must** require physical demonstrations of repository operations and especially retrieval **before** a license to receive and possess waste is issued. If these things are not required in the YMRP, NRC will not be a regulator issuing a license but rather a coach giving DOE a vote of confidence.

Submitted by,

Judy Treichel
Executive Director