

December 24, 2002

The Honorable Shelley Berkley
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Berkley:

I am responding on behalf of the Nuclear Regulatory Commission (NRC) to your letter of October 21, 2002, concerning opportunities for the State of Nevada and the public to attend NRC/U.S. Department of Energy (DOE) meetings associated with NRC's review of a possible high-level waste (HLW) repository at Yucca Mountain. NRC is committed to conducting its business in a manner that is open and transparent to all stakeholders. As such, NRC has conducted many public meetings on DOE's efforts to characterize the site, and on program and technical issues of importance to NRC. I want to assure you that NRC takes its statutory responsibilities concerning the Yucca Mountain project with the utmost seriousness.

The NRC's pre-licensing role was established by legislative mandate, as framed in the Nuclear Waste Policy Act, as amended. Our staff's exchanges with DOE are guided by the Joint Agreement between NRC and DOE staffs for meetings with respect to a future application for a repository at Yucca Mountain, as well as NRC's longstanding policy applicable to open meetings. The pre-licensing agreement that guides our exchanges with DOE is available on our HLW webpage, and a copy is enclosed (Enclosure 1). This agreement evolved from earlier agreements, also public, and incorporated comments from the State of Nevada and affected units of local government. Thus, these meetings are routinely noticed to the public so that interested persons have the opportunity to attend and participate.

In your letter, you requested a list of all public or private management meetings, technical exchange meetings, and site visits between DOE and NRC employees over the last three years. NRC staff routinely announce management meetings and staff technical exchanges to the public in advance to provide interested people the opportunity to attend and participate. Minutes of these meetings are distributed by mail to an extensive service list of organizations. Electronic copies are available to the public through NRC's Agencywide Documents Access and Management System (ADAMS), and, since August 2000, have been posted on our HLW webpage. Nevada's Agency for Nuclear Projects has been on our service list since the list's inception, and State of Nevada employees often attend NRC/DOE meetings.

To help your staff access NRC's records of interactions with DOE where decisions were made, NRC staff visited your office on November 5, 2002, and demonstrated NRC's website and HLW webpage. The staff understands that you and your staff are unable to download documents in NRC's ADAMS system because of the constraints of your computer security system. Several of our stakeholders have had problems accessing NRC's ADAMS system. To rectify this problem, we are developing a web-based public access version of ADAMS which should be available early in calendar year 2003.

On November 18, 2002, in a phone call with your staff, the NRC staff sought further clarification about the scope of your interest in NRC documents. As explained to your staff, the NRC routinely provides 10-day advance notice of management meetings and technical exchanges on our HLW website and, by mail, to an extensive service list. The NRC staff have added you to our mailing and notification lists.

Enclosed is a list of all management meetings and technical exchanges from October 21, 1999, through August 2000, and copies of the corresponding minutes (Enclosures 2 and 3). We have also listed and enclosed copies of correspondence documenting other interactions with DOE since October 21, 1999, that are available in ADAMS, but are not on our HLW webpage (Enclosures 4 and 5). Please note that all these documents are available to the public through the NRC ADAMS system. I have not included documents referencing meetings conducted by other Federal agencies, where staffs from NRC and DOE may have attended, but for which NRC interaction with DOE was not the purpose.

In your letter, you note specific contacts between DOE and NRC that you assert were not open to the State of Nevada, or the public, and you cite commitments made by Dr. Margaret Chu, Director of DOE's Office of Civilian Radioactive Waste Management (OCRWM). In fact, these commitments, and the meetings that gave rise to them, are very much a part of the public record. NRC and DOE staffs have frequently discussed the need for specific improvements in DOE's quality assurance (QA) program for the Yucca Mountain project during public quarterly meetings. These meetings are documented in publicly available meeting summaries. Recently, DOE made specific commitments for improvements to its QA and other programs, as part of a Management Improvement Initiative. NRC discussed these commitments and provided feedback to DOE at public quarterly meetings held on September 6 and 7, 2001; December 5 and 6, 2001; April 18 and 19, 2002; and July 30 and 31, 2002. It is my understanding that a representative of the State of Nevada attended all these meetings. Also, by letters dated January 31 (Mr. Russell Dyer to Mr. Martin Virgilio), April 5, and July 19, 2002 (Dr. Chu to Mr. Virgilio), DOE submitted management improvement plans to NRC. The public meeting summaries and the DOE letters are available on NRC's HLW webpage. Finally, these issues were discussed at the public quarterly meeting on October 16 and 17, 2002, at DOE's Summerlin, Nevada, offices.

The meeting concerning the Preclosure Aircraft Hazard Plan and Map, referred to by Mr. Loux in his August 12, 2002, letter to Dr. Chu, had been scheduled for September 17, 2002. This meeting was not held and has yet to be rescheduled. Public attendance and discussion at all or portions of that meeting may be limited if classified or safeguards information is being discussed.

Under the precicensing agreement, and consistent with NRC regulations, DOE, as a potential applicant, may confer informally with NRC, and NRC may initiate and receive unscheduled communications from potential applicants. These interactions constitute informal contacts between a prospective applicant and NRC staff, as described in 10 CFR 2.101(a)(1) of our regulations. There is no requirement that such interactions be public or that documentation be kept. For example, staff of NRC's Division of Waste Management occasionally meet with new appointees to DOE's OCRWM to explain NRC's regulatory program and DOE's obligations under NRC's existing regulations. It should be stressed, however, that no decisions or

commitments regarding the potential licensing of a repository at Yucca Mountain are made during such interchanges.

In addition, on August 26, 2002, NRC staff met with OCRWM staff to hear about DOE design plans, already presented in the spring of 2002 to the Nuclear Waste Technical Review Board (NWTRB), and again to the National Academy of Sciences (NAS). Presentation slides used by DOE at the August meeting are enclosed (Enclosure 6). I believe this is the meeting Mr. Pederson referred to at the September 10, 2002, NWTRB meeting, and that you cite in your letter. The primary purpose of the August meeting was to impress on DOE the need to hold a public technical exchange with the regulator, given that DOE had already presented this material to the NWTRB and the NAS. The subject technical exchange was held, with public notice and participation, on November 5 and 6, 2002. Bilateral meeting minutes are in preparation.

While occasional, nonpublic NRC/DOE interactions, such as I have described, are permissible and appropriate, they do not serve as substitutes for announced public interactions; no policy decisions nor commitments are made as a result of them.

NRC's regulatory responsibilities also include oversight of the management and disposal of classified wastes from the Nation's military program. Meetings with the technical staff from the Department of Defense, along with staff from DOE, are held to review issues associated with the potential disposal of these materials at the proposed repository at Yucca Mountain. Because of the classified nature of the information discussed, these meetings are not announced and are not open for public observation. A list of such interactions since October 21, 1999, where DOE/OCRWM representatives were in attendance, is provided (Enclosure 7).

In conclusion, I believe that the NRC staff properly notices and documents meetings between our staff and that of DOE where decisions or commitments are made that concern Yucca Mountain. The staff does so in a fashion consistent with NRC policy and the public prelicensing agreement between the two agencies. The NRC's Office of Inspector General recently reviewed allegations of impropriety similar to those you have asserted from the Attorney General of the State of Nevada. The Inspector General's investigation did not disclose any wrongdoing on the part of the NRC staff.

The NRC will continue to keep the State of Nevada and other stakeholders apprised of NRC/DOE public meetings on the Yucca Mountain project, and I look forward to your continued interest in these matters. If you have any further questions or concerns on these matters, please feel free to contact me or Dennis Rathbun, Director, Office of Congressional Affairs.

Sincerely,

/RA/

Richard A. Meserve

Enclosures: See next page.

Enclosures:

1. "Agreement Between DOE/OCRWM and NRC/NMSS Regarding Prelicensing Interactions"
2. List of Management Meetings and Technical Exchanges between NRC and DOE regarding Yucca Mountain (October 21, 1999 through August 2000)
3. Minutes of Listed Management Meetings and Technical Exchanges
4. List of NRC Correspondence Documenting Interaction with DOE since October 21, 1999
5. Listed Correspondence
6. Presentation slides used by DOE at August 26, 2002, meeting with NRC managers
7. List of Classified meetings with U.S. Department of Defense since October 21, 1999, at which DOE/OCRWM representatives were present