

THE SECRETARY OF ENERGY  
WASHINGTON, D.C.

October 1, 1987

Honorable James G. Martin  
Governor of North Carolina  
Raleigh, North Carolina 27611

Dear Governor Martin:

As you know, in May 1986, I directed the Department of Energy to postpone, until the mid-1990's or later, site-specific work related to a second repository for high-level nuclear waste. I made this decision based on the progress in siting the first repository and projections which showed that a second repository is not needed until well into the next century.

Recognizing that new legislative action by Congress would be required to implement this decision, I said, in testimony before Congress on April 23, 1987, that absent Congressional direction to the contrary, the Office of Civilian Radioactive Waste Management (OCRWM) would resume site-specific activities for a second repository at the end of the fiscal year.

Opponents of the Department's second repository decision have filed suit to compel the Department to resume the site-selection process. Numerous cases regarding this matter are being litigated, and the U.S. Court of Appeals for the Ninth Circuit has scheduled an oral argument on this issue on October 9. In a declaration filed on June 26, 1987, in the case of State of Washington v. U.S. Department of Energy (9th Cir. 87-7085), I stated that I have notified OCRWM to "recommence site-specific activities on the second repository program by September 30, 1987...in the event that Congress does not take legislative action..."

I have been pleased to see action in Congress that holds considerable promise for new legislation regarding the second repository program. That has been encouraging. Both the House and Senate are considering bills to end the second repository process, although

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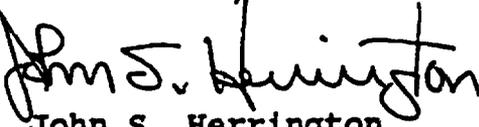


they differ in format. I am particularly encouraged by the progress of S. 1668, sponsored by Senators Johnston and McClure. It includes a prohibition on further site-specific work on a second repository and calls for a report on the need for a second repository. I feel that this legislation lays out an effective course of action for this program. There is every indication that the Senate will conclude consideration on this matter in early November. It is my hope that this will provide the impetus for action in House of Representatives.

However, notwithstanding this fact, until the law is changed I am obligated to comply with the current second repository mandate of the Nuclear Waste Policy Act of 1982. While I remain optimistic, the Congressional process has in fact not advanced to a stage that provides definitive legal direction on this matter, within the stated timeframe. Therefore, the Department will resume the second repository site-selection process from the point at which it was suspended in May 1986. In an effort to give Congress and the legislative process a chance to come to a final solution of this difficult problem with minimum interference from political forces, I specifically draw your attention to the fact that the only step contemplated is the resumption of the preparation of the Area Recommendation Report (ARR) which now involves the review and consideration of the 60,000 comments received on the draft ARR. This process will take approximately 12 to 18 months. Until the ARR has been completed, the Department need not and does not intend to conduct any activities on any of the sites described in the draft ARR.

I am hopeful that Congress will act soon to resolve this issue; and once Congressional action is completed, I intend to revise our activities to conform to the directives from Congress. Progress has already been made toward resolving this matter, and a concerted effort on behalf of all interested parties can conclusively end this issue. In the meantime it is my obligation as Secretary of the Department of Energy to ensure that we obey existing law.

Yours truly,

  
John S. Herrington

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