



THE SECRETARY OF ENERGY
WASHINGTON, D.C.

February 11, 1987

Honorable Philip R. Sharp
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of February 2, 1987 concerning the hearing before the Subcommittee on Energy and Power scheduled for February 11, 1987 and the particular questions regarding the repository program under the Nuclear Waste Policy Act that you brought to my attention.

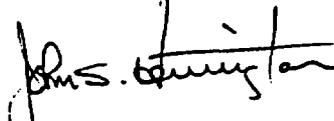
As to your questions regarding the approach contained in the draft Mission Plan amendments for timing the first and second repository programs, I can only emphasize that the Department has absolutely no intention to claim any authority unilaterally to change existing law. Nor do I believe that the judgments made by the Department reflected in the draft Mission Plan amendments fairly can be characterized in this fashion.

The fact of the matter is that the schedules set forth in the draft amendments to the Mission Plan were based solely upon programmatic judgments. They were not intended to set forth any particular legal position, but rather to describe the Department's considered and informed judgments, based on its actual experience in administering these programs, of the course and timing that the first and second repository programs should take given current circumstances. I recognize, of course, that carrying out these programs in the way described in the proposed amendments to the Mission Plan will require some form of new legislation to accomplish. I do not believe that fact should deter us from making needed recommendations based on what has been learned from actual administration of the statute.

The remaining questions in your letter included requests for the Department's legal opinions regarding its duties to accept spent fuel that are specified in the statute and in the contracts that the Department has executed with utilities generating spent fuel. I do not believe that it would be prudent or responsible for the Department to attempt to render any authoritative legal judgments at this time, ten years before the facts giving rise to any issues can have developed. Questions such as those you have raised may well have to be addressed in light of the facts as they exist in 1998. It is not possible now, however, to render any such legal advice absent a concrete factual setting that would illuminate and give real meaning to the legal questions being addressed.

Copies of the contracts and analyses regarding impacts of on-site storage by 1998 will be provided to you by February 20, 1987. I look forward to addressing these matters with the Subcommittee during my appearance February 11, 1987.

Yours truly,



John S. Herrington

cc: Honorable Carlos J. Moorhead
Ranking Minority Member