



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SEP 20 1989

MEMORANDUM FOR: James L. Blaha
Assistant for Operations

FROM: Robert E. Browning, Director
Division of High-Level Waste Management

SUBJECT: OPTIONS UNDER CONSIDERATION BY DOE FOR NEAR-TERM
REPOSITORY WORK

The attached information regarding options for near-term (2-3 years) repository work being considered by DOE is provided for the information of the Commissioners' Assistants. The material generated by Carl Gertz, DOE was intended for internal DOE use only, but was inadvertently released outside DOE. The letter from Senator Bryan is in reaction to the DOE material.

RE Browning
Robert E. Browning, Director
Division of High-Level Waste Management

Enclosures: As stated

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Introduction

- o Secretary has concluded that changes to the program are needed.
- o Changes must address:
 1. The concerns of Nevada residents and their representatives about whether the State is being treated equitably, and
 2. The concerns of the contract holders and Congress about a lack of tangible progress.

Program Changes

Conduct a two year surface based test program to investigate the existence of conditions that would render the site unsuitable. At the end of two years, and after considering the views of the Nuclear Waste Technical Review Board, decide either (i) that the site warrants further study and proceed to initiate the exploratory shaft and sub-surface studies, (ii) that the site does not warrant study and forward such determination to Congress, or (iii) that up to 1 year of further surface based study is necessary before either of the above decisions can be made.

Discussion Points

- o Secretary commits the Department to determining as early as possible if the site is not suitable.
- o To be done in as efficient a manner as possible to avoid the premature commitment of significant resources associated with exploratory shaft subsurface investigations.
- o Direct U.S. Department of Energy (DOE) and contractor personnel to emphasize, in their implementation and analyses, that the 2-3 year effort is not to justify any expectations about the site but rather to objectively evaluate the existence of conditions that would render the site unsuitable.
- o Secretary will have "done all he can," within the current legislation to address state concerns, i.e., he can't summarily leave Nevada, but he can try to get out of the State as soon as possible if the site really has problems.
- o Puts State opposition in the position of having further delaying tactics, i.e., permits, etc., viewed as standing in the way of potentially getting rid of the repository for good.
- o State has taken position on numerous occasions that the site is not suitable and should be abandoned. The Secretary could argue, with these program changes, that if the State believes this then they should be interested in letting DOE move forward with this new approach and verify the States assertions.

- o Makes it clear that the Secretary is not committed to putting the repository in Nevada, that by putting off the exploratory shaft he is facilitating the possibility that the repository program would actually leave Nevada.
- o For the utilities, the delay impacts are offset by the evidence of progress and the fact that the program is designed to be efficient and result oriented.
- o Should the State still refuse to issue appropriate permits, then the Department must initiate litigation procedures and/or propose legislation that would enable the field studies to begin. The amount of time between the initiation of field studies and the start of shaft construction would probably be less than two years in this instance.

TALKING POINTS

Rev 1

o This is an indication that the Secretary of Energy has listened to the concerns raised by various State representatives and concluded that changes to the program are required.

o Unfortunately, Senator Bryan apparently is not aware of the State's recommendation on this issue that was made while he was governor.

o The informal discussion paper in question offers a suggestion similar to one made by the State of Nevada several times in the last year.

- Initially, the State asked that studies focus on potentially adverse conditions. "A major decision point must be established...to determine whether site characterization should continue or not. A 'go no-go' determination should be made early in the site characterization program..." as written by Nuclear Waste Project Office Director Robert Loux in a September 6, 1988, letter to DOE accompanying the State's comments on the draft Site Characterization Plan.

- "Nevada believes that a technically and fiscally conservative site characterization program should start with a surface-based program designed to examine and possibly resolve potentially disqualifying issues such as mineral resource potential, effects of future vulcanism, faulting, etc., prior to the initiation of the excavation of exploratory shafts," June 21, 1989, letter from Governor Miller to Admiral Watkins.

- "...despite admonitions from the State of Nevada and numerous other parties, the plan fails to provide a program that places an emphasis on early examination of critical geotechnical issues that could lead to disqualification of the site under DOE's own General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories..." September 1, 1989 letter from Robert Loux, State of Nevada, to Sam Rousso, OCRWM."

o The paper suggests conducting two years of surface-based studies before sinking an exploratory shaft in order to investigate whether conditions exist to make the site unsuitable.

o The discussion in the paper emphasizes that "the 2-3 year effort is not to justify any expectations about the site but rather to objectively evaluate the existence of conditions that would render the site unsuitable." That means immediately studying any conditions that might make Yucca Mountain unsuitable.

o The paper suggests that this approach "makes it clear that the Secretary is not committed to putting the repository in Nevada..."

o In order to follow the State's recommendation to make a "go, no-go" determination, DOE must receive appropriate environmental permits that now are being held in abeyance by the State. As stated before, if the State continues to refuse to release the permits necessary for DOE to carry out the law, litigation must be considered.

In answer to a question about the "eyes only" notation:

o Obviously, this information is simply offered for discussion at this point. There has been no discussion of it, and absolutely no decisions have been made. It is a normal course of business to put preliminary thoughts and ideas down on paper in order to discuss them.

NICHOLAS BRYAN
BRYANCOMMITTEE
BANKING, HOUSING,
URBAN AFFAIRS
COMMERCE, SCIENCE
TRANSPORTATION
JOINT HEARINGS

United States Senate

WASHINGTON, DC 20510

August 28, 1989

James D. Watkins
Admiral, U.S. Navy (Retired)
Secretary of Energy
1000 Independence Avenue S. W.
Washington, D. C. 20565

Dear Mr. Secretary,

Enclosed is a copy of an "Eyes Only" internal DOE memorandum which was apparently sent from Carl Gorts, to DOE headquarters in Washington, D.C. This document, which I find quite disturbing, appears to reflect current DOE strategy for revising the Yucca Mountain nuclear waste repository project.

Aside from the obvious conclusion from reading this memo that DOE is making a desperate last attempt to save the repository program, one could draw several other conclusions. Primarily, it appears that DOE is seeking a revised strategy aimed at showing any degree of progress to justify continuing the Yucca Mountain project; circumventing the state role; and launching a public relations campaign to seek support for the DOE position.

According to this memo the DOE seems very concerned that the nuclear utility industry may be losing faith in DOE's efforts to place the dump in Nevada, and the memo lays out a concerted public relations strategy to allay those concerns. The memo implies that demonstrating "evidence of progress" to the nuclear utility industry, is DOE's foremost motivation in devising a new strategy to maintain momentum in locating the dump in Nevada. This once again reveals that the department is more interested in appearances than acknowledging the reality of this fatally flawed program.

Of great concern to me is the final point of the memorandum that "should the state still refuse to issue appropriate permits, then the department must initiate litigation procedures and/or propose legislation that would enable the field studies to begin." The thrust of this paragraph is that the DOE will seek legislation to strip Nevada of the few remaining legal defenses it has against the effort to locate the dump at Yucca Mountain.

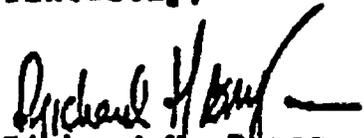
This proposed strategy runs one hundred and eighty degrees counter to remarks made by you Mr. Secretary, when you met with the

Nevada Congressional Delegation and Governor Bob Miller. As you remember you stated that you could not make any changes in the direction of the program because Congress has spoken. Now, it appears the reluctance to approach Congress is missing when it comes to further weakening our ability to exercise the state's sovereign rights.

It would appear that as Nevada exercises its legal rights, the DOE will seek to change the rules.

To conclude, there appears to be disturbing, and in some instances, contradictory points raised in this confusing DOE memorandum. In the beginning of the memorandum, it is stated that changes in the program must be made. On this point we agree. However, the memorandum then goes on to devise a strategy based primarily on window dressing and punitive action toward the state of Nevada. I would appreciate your comments on each point raised in this memorandum.

Sincerely,


Richard H. Bryan
United States Senator