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May 5, 2004

Via Facsimile @ 301-415-1672
Ms. Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Madam Secretary:

This is in regard to the State of Nevada's Petition for Emergency Action filed on April 14, 2004.

Mr. Marc Johnston's April 30, 2004, letter on behalf of the U.S. Department of Energy ("DOE") to Nevada Attorney General Brian Sandoval, which commits that DOE will not ship any of the material in the Fernald silos to the Nevada Test Site without 45-days advance notice, eliminates the need for the NRC to take emergency action on Nevada's Petition within the next 45 days or so. However, Mr. Johnston's letter does not moot Nevada's Petition in its entirety, as DOE has still not committed to comply with NRC licensing requirements or advised it has abandoned plans to dispose of the silo wastes in Nevada.

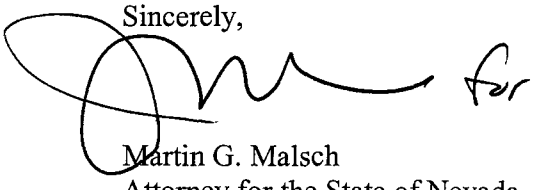
Accordingly I ask you to advise me whether the NRC will be following here its standard practice in reviewing and deciding 10 C.F.R. § 2.206 petitions set forth in NRC Directive and Handbook 8.11. In particular, I would appreciate being informed whether a Petition Manager and a Petition Review Board have been appointed. If a Board has been appointed, Nevada would like to address that Board at a public meeting.

In this regard, Nevada is also aware of Mr. Johnston's letter to you, also dated April 30, 2004, which advised, "DOE is still evaluating the arguments presented in the Petition and is unable at this time to say how long that process will take." Considering that Nevada's Petition was a scant one and one-quarter pages in length, and relied on statutory language known to DOE, this should be taken as a DOE delay tactic. DOE wants to postpone having to explain itself to Nevada and NRC. Moreover, DOE has already announced through its spokesman, Mr. Joe Davis, that it is still convinced it can legally ship the wastes to Nevada on schedule (see copy of an Internet news article dated May 1, 2004, from *The Cincinnati Enquire* as Attachment 1). Therefore, it is apparent DOE has already completed its evaluation of Nevada's Petition, but refuses to give it to the NRC.

It has become apparent that DOE simply does not take the NRC or its § 2.206 petition process—much less basic concerns of safe disposal of radioactive waste—seriously, and needs remind that NRC does take its responsibility for safe disposal of radioactive waste very seriously. Accordingly, Nevada requests NRC to order DOE to answer Nevada's Petition promptly, but in no event later than May 30, 2004. Since DOE has already done the evaluation, thirty days should be more than sufficient to put that evaluation in the proper NRC format for filing.

Finally, we have become aware that DOE is attempting to solve its Fernald silo waste problem by seeking to induce Congress to simply change the applicable law. DOE has offered the Energy Committee its proposed Section 634 of the Energy Bill, which, as currently written, would allow DOE to dispose of the Fernald wastes at the Nevada Test Site with no further licensing activities and with none of the standard precautions used nationwide for the disposal of 11e(2) wastes, for mixed wastes and for hazardous wastes. This shameless endeavor by DOE cannot be squared with any of the traditional requirements for waste disposal safety. Accordingly, Nevada respectfully requests that the NRC review this proposed new legislation and recommend against it on health, safety, and environmental grounds. For your convenience, I have also attached the language of Section 634 (Attachment 2), as well as an analysis by Nevada (Attachment 3), for your consideration.

Sincerely,



Martin G. Malsch
Attorney for the State of Nevada

MGM/ec
Attachments

c: Dr. William D. Travers
Executive Director for Operations, NRC

Karen D. Cyr, Esq.
General Counsel, NRC

Dr. Martin J. Virgilio
Director, Office of Nuclear Material & Safeguards, NRC

Ms. Jessie H. Roberson
Assistant Secretary for Environment Management, DOE

ATTACHMENT 1

Saturday, May 1, 2004

Fernald cleanup slows down

Warning promised if silo waste moved

By Dan Klepal
The Cincinnati Enquirer

CROSBY TOWNSHIP - The U.S. Department of Energy, in a letter written Friday to the Nevada Attorney General's Office, said none of the 153 million pounds of nuclear waste from the Fernald silos will be shipped to that state without at least a 45-day notice.

Two weeks ago, the Nevada Attorney General's Office threatened to sue the Department of Energy if Fernald waste was shipped for permanent disposal at the Nevada Test Site, a low-level nuclear-waste repository 65 miles northwest of Las Vegas.

Nevada claims it is illegal, unsafe and a violation of the Department of Energy's own rules governing storage of nuclear waste to dispose of the silo material in the Nevada Test Site.

"The department is evaluating the points raised in your letter, and at this time we are unable to state how long that process will take," said the DOE's letter, signed by Marc Johnston, deputy general counsel for litigation.

"Accordingly, I have been authorized to represent that the Department will not ship any of the material stored in the Fernald silos to the Nevada Test Site without first providing to you 45 days advance notice."

Nevada Attorney General Brian Sandoval said Friday that the letter is a victory for the people of his state, adding that a 45-day notice would give him sufficient time to file a lawsuit asking for an injunction to stop the shipments before they could begin.

Senior Deputy Attorney General Marta Adams, who would handle any lawsuit filed against the DOE, said such a suit could be filed within a day.

"We feel the violations are pretty significant and pretty clear, and that's why we are so confident," Adams said. "You don't take that kind of waste and put it in a glorified hole in the ground

in glorified bags."

But Department of Energy spokesman Joe Davis said the letter doesn't really change anything. He said the DOE is still convinced it can legally ship the waste to Nevada on schedule. Shipments are to begin in early June.

"It is our intention to keep the schedule," Davis said. "We don't think that has been jeopardized by trying to be responsive to the state of Nevada.

Davis wouldn't respond directly when asked if that means the waste will be removed from the concrete silos that have safely stored it for 50 years, even if there is no clear final destination for it. But he did say: "I don't think we have any unresolved issues."

That's news to the Nevada officials.

Sandoval wrote in a letter dated April 13 that storing silos waste at the Nevada Test Site violates federal and state law. "DOE's plan is reckless and unsafe, and flagrantly violates the law," Sandoval's letter said.

Any delay is likely to make it impossible for the DOE and its prime contractor at the site, Fluor Fernald, to make the June 2006 deadline to complete the cleanup. Fluor Fernald, which is handling most of the $4.4 billion cleanup, has a $250 million bonus riding on meeting that deadline.

Jeff Wagner, a spokesman for Fluor Fernald, said it is unclear if it could remove waste from the silos and store it in a temporary facility at Fernald.

The DOE might want to begin removing the silo waste so that it is ready to be shipped as soon as a final destination is found. Government officials originally wanted to ship the waste to a private landfill in Utah, but public outcry over that idea caused landfill owners there to abandon the plan.

If it can't ship Fernald waste to Nevada, the Department of Energy has no place else to turn.

Removal of the waste from the silos into a temporary storage facility at Fernald is a frightening possibility to Lisa Crawford, leader of a citizens group that sued to get the cleanup started and has monitored it for the past decade.

"It leaves us in a real mess," Crawford said. "We have nowhere to send it. And it's our opinion that, at this point, they can pull nothing out of those silos until they have a clear path forward."

Crawford's group, Fernald Residents for Environmental Safety and Health (FRESH), have thrown up another potential roadblock for the silo cleanup. In a letter to the Defense Nuclear Facilities Safety Board, the group said neither the DOE nor

Fluor plan to perform the proper safety reviews before starting the dangerous process of removing the waste from the silos.

Crawford believes the safety reviews are being cut short to save time so the 2006 deadline can be met.

Dave Kozlowski, the DOE's deputy director at Fernald, said that's not true.

E-mail dklepal@enquirer.com

TOP STORIES
Once again, Culbersons wait in hope and dread
It was robbery suspects' lucky day
City sends horse out to pasture; family upset
Fernald cleanup slows down

IN THE TRISTATE
Breast cancer patients network
Fairfield's looking swell in classic 'Hello, Dolly!'
Children's, Medical Mutual without contract at deadline
Lot sizes may increase
Region's road deaths decline
Neighbors briefs
Rookwood backers, opponents file briefs
5-year-old suspended for having pocketknife
Feds, mayor at odds over force reports
Alcohol level 0.22 in man cops shot
Presidential rivals 'carded'
Public safety briefs
School construction plan shrinks
Students compete in Science Bowl

ENQUIRER COLUMNISTS
Prayer day aims to help heal nation
Good Things Happening

LIVES REMEMBERED
J. Herbert Heger, educator
Sister Caroline, 93, long-time teacher

KENTUCKY STORIES
Cemetery restoration taught
Day for celebs, parties and - oh yes - the race
One year, 500,000 liters of beer
Agents seize 50 pounds of marijuana, arrest five
Many worries for Ky. teachers

ATTACHMENT 2

AMENDMENT NO. ____ Calendar No. ____

Purpose: To enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

(no.) _____

(title) _____

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DOMENICI to the amendment (No. ____) proposed by _____

Viz:

At the end of the amendment, add the following:

DIVISION ____—ENERGY

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the "Energy Policy Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

"(6) CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

"(7) SUNSET PROVISION.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.".

SEC. 634. FERNALD BYPRODUCT MATERIAL.

Notwithstanding any other law, the material in the concrete silos at the Fernald uranium processing facility managed on the date of enactment of this Act by the Department of Energy shall be considered byproduct material (as defined by section 11 e.(2) of the Atomic Energy

Act of 1954 (42 U.S.C. 2014(e)(2))). The Department of Energy may dispose of the material in a facility regulated by the Nuclear Regulatory Commission or by an Agreement State. If the Department of Energy disposes of the material in such a facility, the Nuclear Regulatory Commission or the Agreement State shall regulate the material as byproduct material under that Act. This material shall remain subject to the jurisdiction of the Department of Energy until it is received at a commercial, Nuclear Regulatory Commission-licensed, or Agreement State-licensed facility, at which time the material shall be subject to the health and safety requirements of the Nuclear Regulatory Commission or the Agreement State with jurisdiction over the disposal site.

SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RADIOACTIVE WASTE.

(a) DESIGNATION OF RESPONSIBILITY.—The Secretary of Energy shall designate an Office within the Department of Energy to have the responsibility for activities needed to develop a new, or use an existing, facility for safely disposing of all low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Nuclear Regulatory Commission for Class C radioactive waste (referred to in this section as "GTCC waste").

ATTACHMENT 3

FERNALD WASTES AND DOE'S LEGISLATIVE "END RUN" AROUND DISPOSAL SAFETY

- This is special-interest legislation designed to secure a multi-million dollar bonus award for a DOE contractor.

- The legislation and bonus relate to disposal of radioactive and hazardous wastes currently stored safely in three silos at DOE's site at Fernald, Ohio. The wastes are so dangerous that the National Academy of Sciences called them "high-level" wastes.

- Until DOE decided recently it would be too expensive, it planned to treat the wastes and dispose of them in the same manner as highly radioactive reactor spent fuel.

- Now DOE wants to dispose of the wastes by throwing them in an unlined and unmonitored shallow trench in Nevada, with less protective measures than a landfill for ordinary household trash. However, the need for an NRC license currently prevents this.

- DOE and its contractor cannot, or will not, meet applicable NRC and EPA safety and environmental licensing requirements, so they are asking for legislation to eliminate them. If they are successful, the contractor will win a multi-million dollar bonus because of progress in moving that wastes off-site.

- The legislation would—for the first time since the beginning of the nuclear regulatory program in 1946—eliminate an existing requirement for a license from the Nuclear Regulatory Commission.

- The legislation would set a dangerous precedent: *If you can't meet Nuclear Regulatory Commission safety requirements, don't worry because Congress will exempt you.*

- This legislation would deprive the citizens of Nevada of the benefits of NRC licensing.

- If DOE thinks the wastes should be exempt from licensing, it may ask NRC for an exemption under existing law (Section 81 of the Atomic Energy Act).

SECTION 634 OF THE ENERGY BILL

DOE's Plan to Dispose of Fernald Silo Wastes at the Nevada Test Site is an "End Run" Around Waste Disposal Safety Requirements

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THE FERNALD SILO WASTES: UNIQUELY RADIOACTIVE AND HAZARDOUS

1. The U.S. Department of Energy ("DOE") and its predecessor agencies have owned and operated the Fernald facility ("Fernald") in Ohio since 1951. Fernald was used to convert and concentrate uranium and thorium ore for use in defense nuclear reactors and weapons. Operations ceased in 1989, when Fernald was declared a Superfund site by the U.S. Environmental Protection Agency ("EPA") and placed on the National Priorities List. Since then, Fernald has been undergoing a vast, multi-billion dollar cleanup operation that has generated millions of cubic feet of radioactive and hazardous wastes. Some of the low-level radioactive wastes from cleanup at Fernald were disposed of at the Nevada Test Site ("NTS").

2. DOE has also shipped over 500,000 tons of Fernald low-level radioactive waste by rail to Envirocare of Utah, Inc. ("Envirocare") for disposal. Envirocare owns and operates a commercial disposal facility in Tooele County, Utah, that is licensed by Utah to receive both low-level radioactive and mixed waste for disposal. The definition of "mixed waste" is waste that is considered both radioactive and hazardous as defined by the Resource Conservation and Recovery Act ("RCRA").

3. The wastes at issue are fundamentally and legally different from, and much more dangerous, than the Fernald wastes previously sent to NTS or Envirocare. The material disputed here is approximately 153 million pounds (more than 14,000 cubic yards) of wastes now stored in three 20-feet-tall "silos" at Fernald: "Silos 1 and 2," and "Silo 3" (collectively, the "Fernald silo wastes").

4. In 1942, the Mallinckrodt Chemical Works in St. Louis, Missouri, began extracting uranium from very rich Belgian Congo ores for the federal government's Manhattan Project. These ores contained uranium oxide in concentrations that were typically more than 150 times higher than uranium ores mined in the United States. The highly radioactive, concentrated residues remaining after uranium extraction were referred to under the

classified designation as "K-65" residues, containing uranium and thorium and their decay products—radium, radon, and polonium. Beginning in 1949, the K-65 residues were sent to a storage silo in Lewiston County, New York (the "Niagara Falls Storage Site"), and when this silo was full, the residues were sent to Silos 1 and 2, which were built at the Fernald site. The Fernald Silos 1 and 2 were used to store the Belgian Congo K-65 residues as well as less radioactive K-65 residues from Fernald's own uranium processing operations. Silo 3 at Fernald was used to store radioactive thorium residues.

5. Today, the Fernald silo wastes are of such a high level of radioactivity concentration that they are presently ineligible to be disposed of at Envirocare's fully licensed facilities. In their untreated and undiluted form, the moist wastes in Silos 1 and 2, comprising a kind of sludge, are at least 125 times more radioactive than is allowed for disposal at the Envirocare facility. DOE measurements of radioactivity at the dome surfaces of Silos 1 and 2 have shown levels 20,000 times higher than normal background radiation.

6. The wastes at Silos 1 and 2 also contain hazardous constituents as defined under RCRA and Nevada regulations, including arsenic, leachable lead, barium, the toxic waste polychlorinated biphenyls (PCBs), and the hazardous solvents tributylphosphate and Aroclor, among others, and the wastes emit prodigious quantities of radioactive radon gas into the air. DOE studies indicate that the air in the upper parts of the silos contains radon at a concentration 60 million times greater than background concentrations of radon in normal ambient air. Airborne radon decays in turn to radioactive polonium, which deposits itself as a solid dust onto regional soils and vegetation and in surface water. Silo 3 contains dry, cold metal oxides, and large quantities of radioactive Thorium-230, which decays to radioactive Radium-226. Silo 3 also contains several listed hazardous substances, including arsenic, cadmium, chromium, and selenium.

7. In 2000, the National Academy of Sciences determined that, because the concentrations of radioactive constituents Radium-226 and Thorium-230 in the Fernald silo wastes vastly exceed those found in common uranium mill tailings elsewhere in the U.S., the wastes should appropriately be referred to as "high-level" radioactive wastes to distinguish them from the "low-level" wastes and tailings historically sent by DOE to NTS and Envirocare, and disposed of elsewhere at tailings disposal sites. The Academy noted that, because Thorium-230 decays to Radium-226 with a half-life of 75,000 years, and Radium-226 is the primary offending isotope in the wastes (both because it is an *alpha* and *gamma* emitter itself and because it decays to dangerous radon gas), the hazards associated with the wastes will actually *increase* over the next thousand years as more radium is produced in them.

8. DOE had originally and formally proposed in a 1994 Record of Decision ("ROD") to treat the Fernald silo wastes in similar fashion as other high-level radioactive waste residues at other DOE sites, "vitrifying" them by solidifying the waste in immobilized glass logs for long-term storage and eventual disposal in a high-level waste geologic repository. When that project proved too expensive and technically impractical, DOE decided in July 2000 to instead mix the wastes into a less secure concreted form, referred to by DOE as "stabilization."

9. Removal, stabilization, and disposal of the Fernald silo wastes comprise one of the last major cleanup operations remaining at Fernald. DOE has promised its prime contractor for the Fernald cleanup, Fluor Fernald (a division of Fluor Corporation), at least a $250 million bonus if the cleanup is completed by December 2006. Moreover, DOE managers at Fernald are also entitled to bonuses if the milestone is met. For Fluor and the DOE managers to receive their bonuses, removal of the waste materials from the silos is imminent, and the wastes are set to begin leaving Fernald for NTS as early as mid-June 2004. However, there would be no significant harm to the workers, the public in Ohio, or the environment if the wastes remained in the silos for several additional years pending selection or development of a suitable storage or disposal site.

DOE Looks to the Nevada Test Site Instead of Developing a Safe Facility

10. On February 25, 2004, DOE formally announced in a meeting with Nevada officials that it would ship the Fernald silo wastes to the Nevada Test Site ("NTS"), claiming NTS is the "only one spot in the country that this waste can go to." Until that time, Nevada had presumed that the Fernald silo wastes would be sent to Envirocare. DOE now plans 3750 waste shipments to NTS on flatbed trucks containing a total of at least 7000 containers, many of which are little more than glorified heavy-duty plastic bags. The shipments will ensue for a period of at least 18 months, at a cost of $400 million. DOE's transportation route plan calls for the shipments to traverse Oklahoma and the Texas, going through Amarillo and other cities along their way to Nevada.

11. NTS is only 65 miles from Las Vegas, one of the fastest growing metropolitan areas in the United States.

12. DOE uses two locations at NTS for the disposal of low-level radioactive waste. This dispute concerns DOE's intended use of a portion of "Area 5," a 732-acre plot where low-level waste is disposed of in shallow, unlined pits.

13. DOE does not have a license from the U.S. Nuclear Regulatory Commission ("NRC") for the disposal of any radioactive materials at NTS.

14. Nevada has entered into an Agreement with NRC pursuant to Section 274 of the AEA, 42 U.S.C. § 2021, whereby NRC has ceded certain of its regulatory functions to Nevada. Nevada is thus defined as an "Agreement State." DOE has no Agreement State license for the disposal of any radioactive waste at NTS.

15. The NTS disposal site contains no liner or barrier to keep waste material from leaching into the ground, a mandatory aspect of licensed hazardous waste, mixed waste, and uranium mill tailings disposal sites. Moreover, DOE plans no monitoring to determine whether the material disposed of there is moving to groundwater below the site. Such monitoring is required for all licensed hazardous waste, mixed waste, and uranium mill tailings disposal sites. Nevada's requirements for the regulation and disposal in the state of municipal garbage (such as paper cups and household trash) substantially exceed those that will be applied by DOE to the regulation and disposal of the Fernald silo wastes at NTS.

16. NTS has no rail access, which necessitates shipments of any large blocks of waste to the Site, such as those planned from Fernald, by a multitude of trucks.

A STORAGE ALTERNATIVE TO THE NEVADA TEST SITE

17. Notwithstanding DOE's assertion that NTS is the "only one spot" the Fernald silo wastes can go when they leave Fernald, there exists in Andrews County, Texas (only 230 miles southwest of DOE's proposed shipping route from Fernald to NTS), a large radioactive waste storage facility with rail and truck access operated by Waste Control Specialists, LLC ("WCS"), a company that has informed DOE it is both willing and able to receive the Fernald silo wastes for indefinite storage pursuant to permits issued to it by the State of Texas, an NRC Agreement State.

18. Moreover, that company announced this year that it is preparing a disposal license application to submit to the Texas Department of Health (an NRC Agreement State agency) that, if granted, would allow the safe and lawful

disposal of the Fernald silo wastes in its large, remote disposal facility near the Texas-New Mexico border. The company is already permitted to dispose of all categories of RCRA hazardous wastes.

19. Shipping the Fernald silo wastes by rail to WCS instead of by truck to NTS would save DOE—and taxpayers—tens of millions of dollars and would reduce public heath and environmental consequences otherwise associated with the planned, unlicensed disposal of the wastes at NTS and the thousands of truck shipments necessary due to NTS's lack of rail access.

CONGRESS ENSURED REGULATION OF BOTH RADIOACTIVE AND HAZARDOUS SUBSTANCES IN MILL TAILINGS WASTES

20. In 1978, in recognition of a growing public health and safety hazard, Congress sought to impose licensing and regulation requirements on wastes and so-called "tailings" from abandoned and operating uranium and thorium mining, milling, and processing facilities by enacting the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"), 42 U.S.C. §§ 2014-2113, 7901-7925, and 7941-7942. Among other things, UMTRCA added Section 11e(2) to the Atomic Energy Act ("AEA"), defining such tailings to be "byproduct material" under the AEA and making them subject to a unique set of laws established under UMTRCA and regulations promulgated thereunder by EPA at 40 C.F.R. Part 192 and by NRC at 10 C.F.R. Part 40, Appendix A.

21. Unlike low-level radioactive wastes (or so-called AEA Section 11e(1) byproduct materials), which can contain no hazardous wastes without being classified legally as "mixed wastes" (subject to regulation under RCRA, 11e(2) byproduct materials) are exempt from RCRA even though they typically do contain hazardous constituents, some originating from the natural ore and some from uranium and thorium processing using solvents and other hazardous substances. Because RCRA (42 U.S.C. § 6903(27)) had previously exempted "byproduct material" from hazardous waste disposal regulations as defined in the AEA (at a time when "byproduct material" did not include the 11e(2) addition), Congress took measures with UMTRCA to close any regulatory gap that would be created by exempting 11e(2) materials from RCRA by amending the AEA to require EPA to issue rules for controlling both radiological and non-radiological hazards from 11e(2) materials that parallel those under RCRA, and to require NRC to assure compliance with these EPA rules, as well as with NRC's own comprehensive rules, in issuing and renewing 11e(2) licenses or in granting Agreement States authorization

to do so. *See* 42 U.S.C. §§ 2111, 2113, 2114, 2022, as well as 40 C.F.R. Part 192 and 10 C.F.R. Part 40, Appendix A.

22. Since they were not "byproduct material" until UMTRCA was passed in 1978, uranium and thorium mill tailings originating at unlicensed facilities before that time have long been interpreted by NRC to be subject to RCRA, whereas tailings generated under NRC or Agreement State licenses after 1978 have been held to the hazardous waste regulations implicit both to the UMTRCA regime and to EPA and NRC regulations for non-radiological hazards that were promulgated thereunder. This integrated legal regime thus ensures that all uranium ore processing tailings (or 11e(2) wastes) are regulated both for radioactive and for hazardous perils.

DOE'S LATEST "END RUN" AROUND THE WASTE LAWS

23. DOE now seeks to circumvent the longstanding statutory architecture governing uranium mill tailings by avoiding both RCRA compliance *and* the complementary hazardous waste regulations established by EPA and NRC under UMTRCA.

24. In the latest version of the Energy Bill, DOE introduced legislative language (Section 634—*Fernald Byproduct Material*) that would allow DOE to dispose of the Fernald silo wastes at NTS, something DOE cannot legally do otherwise.

25. Congress should not adopt this provision because it would allow DOE to escape all laws designed to protect against both the radiological and the hazardous perils inherent to the extremely dangerous Fernald silo wastes.

26. DOE has the time to develop a licensed mill tailings disposal site that would have a pit liner, groundwater monitoring, and the other standard protections that every other licensed site in America has. Alternatively, DOE has the time to wait for the private sector to accomplish this as well. In the interim, the waste can be left in the silos or removed for storage at a licensed storage facility.

27. It would cost DOE only a fraction of the bonus it intends to pay Fluor Fernald to develop an appropriate, safe 11e(2) disposal site for the silo wastes.