

June 14, 2004

Robert R. Loux, Executive Director  
Office of the Governor  
Agency for Nuclear Projects  
1761 E. College Parkway, Suite 118  
Carson City, NV 89706

**SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S CRITERIA REGARDING  
U.S. DEPARTMENT OF ENERGY'S TOTAL SYSTEM PERFORMANCE  
ANALYSIS FOR YUCCA MOUNTAIN**

Dear Mr. Loux:

Your letter to Chairman Diaz, dated May 18, 2004, transmitting the State of Nevada's concern regarding the U.S. Department of Energy's (DOE) possible reliance on drip shields in support of its potential application for Yucca Mountain (YM) repository has been referred to me for reply. Your letter urges that the U.S. Nuclear Regulatory Commission (NRC), in evaluating DOE's Total System Performance Assessment for the potential YM repository, give no weight to the drip-shield feature of DOE's design. Your concern is based on the possibility that, in the long time period between licensing and the proposed installation of the drip shields (possibly 100 to 300 years), DOE may decide not to install the drip shields or may not have adequate funding to do so. You also expressed concern that the tunnels will deteriorate during this period, which will increase the difficulty of underground staging, transporting, and installing the drip shields, and, consequently, DOE will be less likely to install the drip shields.

In fulfilling our responsibilities under the Nuclear Waste Policy Act, the NRC will review information that DOE relies on in support of its license application (LA) to determine if DOE has demonstrated that there will be reasonable assurance in the pre-closure period and reasonable expectation in the post-closure period as required by the Commission's regulations in 10 CFR Part 63, and in keeping with the guidance provided by the Yucca Mountain Review Plan. In this context, we will carefully consider each of the features proposed by DOE as an element of the facility's design that could affect safety and waste isolation to ensure that DOE has established compliance with NRC requirements. Thus, if included and relied upon by DOE as part of its application, the NRC will review the proposed design of any drip shield that is part of engineered barriers for the potential repository. Until we have had an opportunity to review the application, and any specific proposal regarding drip shields that may be then made, a judgement with respect reliance on such measure would be premature.

R. Loux

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In addition, as provided by the Commission's regulations, any construction authorization or license to receive and possess, if granted, will include binding conditions for the DOE's potential repository. DOE's authority to alter or deviate from such provisions without NRC review and approval, is limited by the Commission's regulations. NRC review and approval would also be required before any license amendment authorizing an application for permanent closure of the potential repository under 10 CFR § 63.51. Failure to comply with license conditions would be subject to enforcement action.

I appreciate your letter concerning DOE's drip-shield emplacement, and trust that this addresses your concerns.

Sincerely,

/RA/

C. William Reamer, Director  
Division of High-Level Waste Repository Safety  
Office of Nuclear Material Safety  
and Safeguards

cc: See attached list

Letter to R. Loux from C.W. Reamer, dated: June 14, 2004

cc:

A. Kalt, Churchill County, NV	A. Elzeftawy, Las Vegas Paiute Tribe
R. Massey, Churchill/Lander County, NV	J. Treichel, Nuclear Waste Task Force
I. Navis, Clark County, NV	W. Briggs, Ross, Dixon & Bell
E. von Tiesenhausen, Clark County, NV	M. Chu, DOE/Washington, D.C.
G. McCorkell, Esmeralda County, NV	G. Runkle, DOE/Washington, D.C.
L. Fiorenzi, Eureka County, NV	C. Einberg, DOE/Washington, D.C.
A. Johnson, Eureka County, NV	S. Gomberg, DOE/Washington, D.C.
A. Remus, Inyo County, CA	W. J. Arthur, III , DOE/ORD
M. Yarbro, Lander County, NV	R. Dyer, DOE/ORD
S. Hafen, Lincoln County, NV	J. Ziegler, DOE/ORD
M. Baughman, Lincoln County, NV	A. Gil, DOE/ORD
L. Mathias, Mineral County, NV	W. Boyle, DOE/ORD
L. Bradshaw, Nye County, NV	D. Brown, DOE/OCRWM
M. Maher, Nye County, NV	S. Mellington, DOE/ORD
D. Hammermeister, Nye County, NV	C. Hanlon, DOE/ORD
M. Simon, White Pine County, NV	T. Gunter, DOE/ORD
J. Ray, NV Congressional Delegation	A. Benson, DOE/ORD
B. J. Gerber, NV Congressional Delegation	N. Hunemuller, DOE/ORD
F. Roberson, NV Congressional Delegation	M. Mason, BSC
T. Story, NV Congressional Delegation	S. Cereghino, BSC
R. Herbert, NV Congressional Delegation	N. Williams, BSC
L. Hunsaker, NV Congressional Delegation	E. Mueller, BSC
S. Joya, NV Congressional Delegation	J. Mitchell, BSC
K. Kirkeby, NV Congressional Delegation	D. Beckman, BSC/B&A
R. Loux, State of NV	M. Voegele, BSC/SAID
S. Frishman, State of NV	B. Helmer, Timbisha Shoshone Tribe
S. Lynch, State of NV	R. Boland, Timbisha Shoshone Tribe
P. Guinan, Legislative Counsel Bureau	R. Arnold, Pahrump Paiute Tribe
J. Pegues, City of Las Vegas, NV	J. Birchim, Yomba Shoshone Tribe
M. Murphy, Nye County, NV	R. Holden, NCAE

cc: (Continued)

R. Clark, EPA

R. Anderson, NEI

R. McCullum, NEI

S. Kraft, NEI

J. Kessler, EPRI

D. Duncan, USGS

R. Craig, USGS

W. Booth, Engineering Svcs, LTD

L. Lehman, T-Reg, Inc.

S. Echols, Esq

C. Marden, BNFL, Inc.

J. Bacoeh, Big Pine Paiute Tribe of the Owens Valley

P. Thompson, Duckwater Shoshone Tribe

T. Kingham, GAO

D. Feehan, GAO

E. Hiruo, Platts Nuclear Publications

G. Hernandez, Las Vegas Paiute Tribe

K. Finrock, NV Congressional Delegation

P. Johnson, Citizen Alert

A. Capoferri, DOE/ Washington, DC

J. Williams, DOE/Washington, DC

C. Meyers, Moapa Paiute Indian Tribe

R. Wilder, Fort Independence Indian Tribe

D. Vega, Bishop Paiute Indian Tribe

J. Egan, Egan, Fitzpatrick & Malsch, PLLC

J. Leeds, Las Vegas Indian Center

J. C. Saulque, Benton Paiute Indian Tribe

C. Bradley, Kaibab Band of Southern Paiutes

R. Joseph, Lone Pine Paiute-Shoshone Tribe

L. Tom, Paiute Indian Tribes of Utah

E. Smith, Chemehuevi Indian Tribe

D. Buckner, Ely Shoshone Tribe

V. Guzman, Walker River Paiute

D. Eddy, Jr., Colorado River Indian Tribes

H. Jackson, Public Citizen

J. Wells, Western Shoshone National Council

D. Crawford, Inter-Tribal Council of NV

I. Zabarte, Western Shoshone National Council

S. Devlin

G. Hudlow

D. Irwin, Hunton & Williams

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\*See Previous Concurrence

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