

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: OGC

AUTHOR: Judy Treichel
AFFILIATION: NV
ADDRESSEE: Nils Diaz
SUBJECT: Overview of DOE's plans, goals for Yucca Mounain Site and requesting the NRC create a YM licensing contention guidance document, as expertise/guidance assistance to effect DOE's LSN certification

ACTION: Signature of Chairman
DISTRIBUTION: RF, SECY to Ack

LETTER DATE: 06/09/2004

ACKNOWLEDGED No
SPECIAL HANDLING: OGC should coordinate response with the EDO...Made publicly available in ADAMS via SECY/DPC

NOTES: Commission Correspondence

FILE LOCATION: ADAMS

DATE DUE: 06/29/2004 **DATE SIGNED:**

NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

Alamo Plaza
4550 W. Oakey Blvd., Ste. 111
Las Vegas, NV 89102
Phone: 702-248-1127
Fax: 702-248-1128
Toll Free: 800-227-9809

Non-profit/Public Advocacy
Judy Treichel, Exec. Director
E-mail: judynwtf@aol.com
Web: www.nvantinuclear.org

June 9, 2004

Nils J. Diaz, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
Rockville, MD 20852-2738

Dear Chairman Diaz:

Since 1987, Yucca Mountain, NV has been the sole site under consideration for the nation's nuclear waste repository. The Secretary of Energy recommended Yucca Mountain for development of a repository and the President then declared the site qualified for application for a construction authorization from the Nuclear Regulatory Commission (NRC) in February 2002.

The Department of Energy (DOE) has been conducting scientific studies of the site for more than twenty years while also anticipating the submission of a license application (LA) to build, operate and eventually close a repository at Yucca Mountain. Toward this end, as site investigations proceeded, DOE forwarded documents and reports to the NRC, building a record of findings that they expected to satisfy the regulations and requirements of licensing. Over the years, as the NRC received the data, questions arose about the completeness and quality of the information in terms of its adequacy for LA.

During the years of discussions between the DOE and NRC it was agreed by both that there was a need for a "high quality license application" and that there should be no surprises at the time of the submission of the LA. NRC identified Key Technical Issues and a process of "issue resolution" that would guide DOE in preparing qualified and adequate data and documentation for a license application. Issue resolution was the justification for numerous technical exchanges and interactions, most open to the public and some closed, in which the NRC, in essence, provided advice and guidance to DOE to facilitate a complete and high quality license application. In addition to the agency interactions, the NRC also developed the Yucca Mountain Review Plan to provide DOE with a guide to what must be included, and how data must be presented, in the LA.

During this time, members of the public were allowed to observe many of these interactions and they were continually assured by officials and representatives of the NRC that the licensing process would be open, fair and would encourage and/or accommodate public

participation. During the course of the extended pre-licensing period, the NRC has created a Licensing Support Network (LSN) and a Yucca Mountain licensing regulation has been written. Public meetings and open houses have been held and representatives of the NRC have told the audiences that they could be included in the licensing process for Yucca Mountain by becoming participants in the LSN and then submitting contentions that spell out their issues of concern. When public advocacy organizations submit contentions, the Licensing Panel will review them and decide if they will be admitted. Prior to the submission, the organization must already have made a substantial investment in time and money to participate in the LSN.

NRC has offered assistance to both governmental and non-governmental organizations in becoming familiar with the LSN and we appreciate that very much. However, we believe that we have a greater and more urgent need. Our involvement with the LSN is solely for the purpose of support for our contentions. Therefore, any investment that we make of time, effort and/or money, is wasted if our contentions are not accepted by the Licensing Panel. This letter is a request to the Commission for advice and guidance regarding the production of high quality and acceptable contentions. Just as neither the DOE nor NRC wants to face surprises at the time of the submission of the Yucca Mountain license application, it is also not in the interest of any of the involved parties for our organizations to be told that we have produced and submitted inadequate contentions and will be denied the opportunity to participate after many years of investing time and financial resources. NRC has assured us repeatedly that they will carefully consider all of the issues included in DOE's LA and that the concerns of the public will be fairly and completely judged. That can only happen if we write admissible contentions.

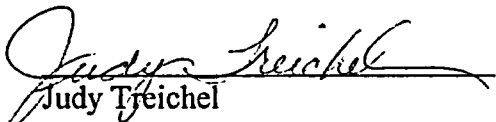
The NRC has gone to great lengths, over many years to say that the playing field is not tilted toward the DOE and that the public is not at any sort of unfair disadvantage in regards to its treatment and consideration by the NRC. If this is true, we believe that we are justified in requesting your assistance during the Yucca Mountain pre-licensing period. This will be a first-of-a-kind licensing proceeding and NRC has devoted vast resources to DOE, which are not routinely provided to other applicants. We are not asking for financial support because we are well aware that NRC does not fund interveners. We are only asking for a small fraction of the procedural assistance that you have provided to DOE. As you are aware, in addition to the advice and guidance that NRC is giving to the DOE during pre-licensing interactions and correspondence, if the LA is docketed, the staff of NRC's Nuclear Materials Safety and Safeguards Division (NMSS) as well as attorneys from NRC's Office of General Council will become *advocates* for the application during the licensing proceedings.


It is well understood that non-governmental organizations *are* at a disadvantage when dealing with one or more federal agencies because we are not appropriated federal funds. In this case, we also are handicapped by our lack of knowledge and experience regarding the primary vehicle for our involvement – contentions. In addition, NRC's adoption of risk informed/performance based analysis is a major departure from the previous rules and regulations and is much more difficult to understand. But it will be the basis for decision making in determination of the granting of a construction authorization.

It is not possible for us to have years of interactions with the NRC as the DOE has had but we do request that NRC create a Yucca Mountain Licensing Contention guidance document as an equivalent to, but certainly not as massive and detailed as, DOE's Yucca Mountain Review Plan. We believe that it is possible and essential that NRC, as a government agency charged with protection of public health and safety, offer expertise and guidance to public advocacy organizations on the writing and submission of contentions so that we are not prohibited from participation in this vitally important process. We believe that the public perception of NRC's neutrality and the fairness and the credibility of the process would be enhanced if you agree to assist us as requested.

The DOE has announced its intention to begin its LSN activity very soon and the NRC rules have deadlines that begin shortly after DOE's LSN certification. If the proposed schedule is met, we would be required to begin meeting our obligations for participation before the end of this calendar year. For these reasons, we ask that you consider our request for assistance and reply very soon.

Sincerely yours,


Judy Treichel
Executive Director
Nevada Nuclear Waste Task Force


Peggy Maze Johnson
Executive Director
Citizen Alert
PO Box 17173
Las Vegas, NV 89114
(702)796-5662
www.citizenalert.org

cc:
Governor Kenny Guinn
Senator Harry Reid
Senator John Ensign
Representative Shelley Berkley
Representative Jim Gibbons
Representative Jon Porter