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To: Strosnider, NMSS

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August 24, 2004

Mr. W. John Arthur, III
Deputy Director
Office of Repository Development (ORD)
Yucca Mountain Project (YMP)
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1551 Hillshire Drive
Las Vegas, NV 89134-6321

RE: Safety-Conscious Work Environment (SCWE) Issue

Dear Mr. Arthur:

I appreciate your reply of August 11, 2004, to my letter of July 22, 2004. However, I respectfully disagree with your main premise that the NRC standard (10 CFR 63) provides an adequate level of protection for onsite workers at the Yucca Mountain repository.

NRC has historically focused on public protection because its mission is "protection of public health and safety." Although it provides radiation standards to protect workers during normal operations (10 CFR 20), its charter does not involve worker protection against radiological accidents. DOE on the other hand needs to protect its large workforce that will be onsite while significant radiological inventory of high-level waste (HLW) is being handled during unique operations involving simultaneous construction activities.

The repository will have a significant work force onsite for a considerable period of time during the preclosure phase. During this phase significant inventory of HLW will be handled, emplaced, and staged while construction is taking place. Many of the facilities, operations and activities will be first of a kind with little precedent or experience. A radiological accident during this phase without engineered safety category protection features will subject the workers to unnecessary risk. As I mentioned in my letter of July 22, the real risk during this phase is the risk to the workers and not the public, especially considering the repository's large offsite boundary distance. Since the early 90's, other DOE non-reactor nuclear facilities have recognized this and provide such worker protection against accidents. If Part 63 were truly risk-informed, it would clearly recognize this past DOE experience.

I'm also aware of the exemptions and exclusions of DOE Order HQ250.1 and 10 CFR 830, but I believe in the case of worker protection, this was a mistake and should be

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corrected by imposing an additional requirement to protect the workers against Category 2 events. I believe when those standards were developed, avoidance of contradictory requirements was a main concern. Additionally, it was generally believed that NRC requirements would be more stringent, and therefore, would provide enhanced protection. However, in the case of worker protection, this is not the case, and the DOE requirements in terms of worker protection against accidents are more stringent and should now be used. However, I do appreciate your concern to not have conflicting requirements (i.e., Part 830 vs. Part 63); however, the more stringent requirement for the workers should be applied in this case. Invoking more stringent requirements is not contrary to NRC guidance.

Furthermore, given the intense controversy surrounding the repository in terms of being able to safely transport and store upwards of 70,000 metric tons of long-lived HLW, I strongly believe that DOE as the owner of the facility should go the extra mile to protect its workforce. By imposing an additional requirement to protect the onsite workers against Category 2 event sequences, the repository design will include safety category (SC) engineered features with a high degree of quality and reliability to protect the workforce.

Sincerely,



Andrew R. Marchese

Cc: Honorable Spencer Abraham, Secretary of Energy (DOE)
Honorable Nils J. Diaz, Chairman, Nuclear Regulatory Commission (NRC)
Dr. Margaret S. Y. Chu, Director, Office of Civilian Radioactive Waste
Management (OCRWM/DOE)
Mr. Jack Strosnider, Director, Office of Nuclear Material Safety and Safeguards
(NMSS/NRC)