

DOCKET NUMBER  
 PROPOSED RULE # 63  
 (70FR 53313)

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NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

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DOCKETED  
 USNRC

December 2, 2005

December 8, 2005 (9:08am)

Secretary, U.S. Nuclear Regulatory Commission  
 Washington, DC 20555-0001  
 ATTN: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY  
 RULEMAKINGS AND  
 ADJUDICATIONS STAFF

Comment Responding to Federal Register /Vol. 70, No. 173/Proposed Rules – “Implementation of a Dose Standard After 10,000 Years” (10 CFR Part 63)

The Nevada Nuclear Waste Task Force has been an active participant in meetings regarding the Yucca Mountain project since the Nuclear Waste Policy Act was amended to single out that site for consideration. We have consistently attended and participated in government agency interactions throughout the history of the project. In addition, the Task Force has corresponded with the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA) and the Department of Energy (DOE) frequently. Many of those letters were focused on the Task Force’s suspicion and/or concern that the agencies were making decisions without even public observation, let alone public involvement.

Attached is an exchange of letters. The first was almost eleven years ago, between the Task Force and then-Chairman Ivan Selin of the NRC. I wrote because of a local newspaper article which said: “But Selin said the commission would try to accommodate the Yucca Mountain planners. ‘If the law permits it to happen, and our regulation doesn’t... then we’ll change our regulation,’ he explained.” He responded that “if changes to Part 60 are anticipated, NRC will actively solicit public comment.” Our concern then, as now, is not whether there will be a public comment period but what has been decided before the public is asked to comment.

Two years later there was an exchange of correspondence between the Task Force and then-Chairman Shirley Jackson. Again I expressed concern that the federal agencies were working together without public involvement or observation. The memo of June 24, 1997 between DOE and NRC was the last written record regarding this issue. (I believe that I got that memo as part of a Freedom of Information Act request.) I later heard, during a discussion at a meeting, that staff at DOE and NRC had been assigned to consider what should be done. Nothing was done.

The third attachment is an exchange between the Task Force and former Chairman Richard Meserve. The issue is the same – collusion between the federal government agencies involved in the Yucca Mountain project. It was our view that the pre-licensing activities appeared to be pre-judgment and pre-approval before any formal public interaction had occurred. After these

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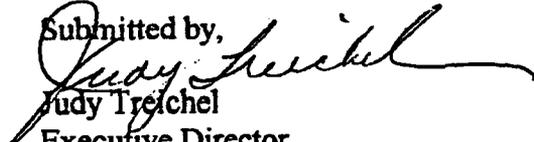
letters there was a series of visits to Nevada by NRC staff. The repeated message was one of assurance to Nevadans that NRC was completely independent from the other agencies. Also following those letters, at each Technical Exchange between the DOE and NRC, the opening statement from NRC staff included a disclaimer about the term "closed pending." The discussions regarding this matter were like a tourist in a country who does not speak the language. NRC's responses to my concerns were just repeated or said louder.

After more than a decade of correspondence, visits to Nevada and meetings open to the public, where NRC emphatically declared its independence from the other agencies and dedication to the public health and safety, our suspicions were confirmed. In August 2005, as a result of a Court ruling, the EPA released a proposed rule that would replace the existing Yucca Mountain radiation standard, 40 CFR Part 197. The following day the NRC released a draft revision to 10 CFR Part 63 which would conform that rule to the EPA draft. This action indicates two things. First there was close interaction and inter-agency cooperation on the rules. And, most importantly, we can only believe that NRC knows that the proposal released for public comment by the EPA will not be changed. Why would the NRC publish a rule and go through a comment period, consideration of comments and finalization of this rule, if they thought that it would be a wasted effort?

NRC also could have conformed to the proposal released by the EPA but set a safe limit for radiation exposures to people living near Yucca Mountain. For the post-10,000 year period NRC could have required that doses not be allowed to rise, and create more dangerous conditions for future generations.

The only comment that the Task Force has to make to the NRC regarding proposed 10 CFR Part 63 is that it should be rescinded. Since the Court's order to NRC was to make its licensing rule conform to the EPA standard, the intent, no doubt is that NRC is to conform to the Final EPA rule. We submit that the appropriate time for NRC to draft a conforming rule is when the EPA rule is released in final form and when it passes legal muster. Because NRC prematurely issued this rule, interested parties have been bogged down with the too-short time period allowed for EPA comments and NRC's proposal is just an added, unnecessary burden. The Task Force urges you to examine all public comments submitted to EPA to gain awareness of the public's opinions on the proposed changes. This has become very difficult since EPA has permanently removed its EDocket from the Internet. It would be helpful to NRC to also have the opportunity to see EPA's comment responses before beginning to propose a conforming rule. This would provide insight for NRC to release a publicly acceptable and legally defensible licensing rule when it is timely and there is a legal and final EPA standard by which to judge Yucca Mountain in any future licensing proceeding.

Submitted by,

  
Judy Treichel

Executive Director

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December 22, 1994

The Honorable Ivan Selin, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Chairman Selin:

On December 19 Daniel Dreyfus, director of nuclear waste projects for the Department of Energy (DOE) addressed your commission. He spoke about the plan to submit a license application to the Nuclear Regulatory Commission (NRC) to build a "low-range" temperature storage site at Yucca Mountain, Nevada. He then told the commission that at a later time DOE would change or amend the license to allow high-temperature storage. This plan is part of a new program strategy with an accelerated repository schedule.

An article about the December 19 meeting appeared in the Las Vegas Review Journal the next day. That story concluded with the following quote from you: "If the law permits it to happen and our regulation doesn't...then, we'll change our regulation," he explained. "Our job is to accommodate the...designer but maintain the public health and safety." This office has been contacted by Nevada citizens and representatives of organizations who find this statement to be very troubling.

The new strategy at Yucca Mountain, now referred to as the Program Approach, compromises promises and assurances made to Nevadans since the project began at Yucca Mountain. When the Nuclear Waste Policy Amendments Act (NWPAA) became law in 1987, singling out Yucca Mountain as the sole site to be studied for a national repository, Nevadans were understandably afraid that there would not be an objective, assiduous scientific analysis of the site but rather that a Yucca Mountain repository had become a fait accompli. Such fears and accusations were countered by DOE officials who repeatedly claimed that - "If it's not proven safe, we won't build it." There were many solemn promises. The one most frequently given was - "If we find that the groundwater at Yucca Mountain can reach the accessible environment in 999 years, we walk away." Such statements and promises were never successful in quelling fears or dispelling opposition so these public presentations and/or debates almost always ended with the DOE official saying, "Don't trust us - trust the oversight. The NRC has to license this facility."

As you are probably aware, there have been serious questions raised about the strategy being employed at the Yucca Mountain Project that has site suitability and license application data gathering occurring in parallel with complimentary milestones and timelines. This is at least partly due to the theory that if the site is licensable - it's obviously suitable. This isn't necessarily true and working under such an assumption leads to less rigorous study in both areas.

Nevadans have had decades of experience with DOE at the Nevada Test Site (NTS). For many of the state's citizens, that facility is the justification of their current fears at Yucca Mountain. The Atomic Energy Commission assurances of safety to residents, downwind of atmospheric tests is well documented and remembered. Just as "duck and cover" at school would keep us safe from Russian bombs, agreeable attitudes would provide protection from US nuclear operations. It is clear now that faith in the promises was a mistake. Many DOE and contract employees agree with this and they prove the sincerity of their assurances that it couldn't happen again by reminding all of us that NTS never had to pass muster with the NRC for licensing.

Since the passage of the NWPA Nevadans have felt as if a gun was being held to their heads. The angry and defensive opposition that exists here will not dissipate and may become more strident if the public sees a program that has been promoted by silly advertising campaigns, now appearing to be the realization of their worst fears. Some nuclear industry and DOE representatives have tried to gain public acceptance for the Yucca Mountain project by convincing people that it is inevitable. Such efforts could incorporate the newspaper quote of your statement.

Nevadans are not alone in their skepticism concerning Yucca Mountain. My office receives many calls from individuals and representatives of organizations who are calling for an independent review of the entire program. The concern, at least in part, is the misplaced optimism of DOE scientists and decision makers. Last Sunday, December 18 there was a segment on the 60 Minutes broadcast on CBS dealing with the current situation at Chernobyl. A Russian physicist who leads a team of scientists monitoring the sarcophagus at the reactor where the accident occurred made the statement - "When it comes to science and safety, there is nothing worse than an optimist." Members of the public, concerned with nuclear waste management, share that view.

Yours truly,

  
Judy Freichel  
Executive Director

# High-density nuclear design eyed at Yucca

□ Storage capacity would greatly increase under such a plan, but studies could slow licensing, officials say.

By Clyde Weiss  
Donrey Washington Bureau

WASHINGTON — Engineers designing the Yucca Mountain repository want to entomb high-level radioactive waste in a denser arrangement in the mountain than had been planned to meet a licensing deadline, Department of Energy officials said Monday.

If planners are required to complete tests on the effects of high-density and high-temperature storage before they can submit a license application, it "would add a decade to the target date for the application," according to Daniel Dreyfus, the Energy Department's director of nuclear waste

projects.

High-density storage is a critical issue for the government as it seeks a site to safely and indefinitely store 77,000 tons of high-level nuclear waste now piling up at nuclear reactor sites across the country.

Density of storage raises questions of nuclear waste package temperature, and how that would affect surrounding rock.

Dreyfus told the Nuclear Regulatory Commission on Monday that the low-temperature design now contemplated "could curtail (waste storage) capacity considerably," compared to higher-temperature designs.

A storage site designed for higher temperatures would mean the government could store radioactive waste more densely, thereby creating extra storage capacity.

Higher temperatures generated by

dense storage also could mean better corrosion protection, since ground water in the surrounding rock would be boiled off ~~before it could damage~~ waste storage tanks.

But the effects of high temperatures on the surrounding rock and water table are uncertain. Long-term studies now are under way that will attempt to answer such questions. For example, one test planned for next spring involves electrically heating excavated rock.

The rock, larger than a car but smaller than a bus, will then have pressure "back loaded" to it to simulate conditions found 1,000 feet underground, according to a contract staffer who works at the Yucca Mountain site.

"We hope to learn how specific rocks react to various levels of heat," said the staffer, who asked not to be

Please see WASTE/2B

*Review Journal 12/20/94*

## Waste

From 1B.  
named.

Dreyfus said such high-temperature tests won't be completed before the year 2008, however. So the application due in 2001 will only support a "low-range" temperature storage site, he explained.

Dreyfus said planners hope their license application can be changed later, after engineers had obtained the necessary data to justify high-temperature storage. But commission Chairman Ivan Selin expressed reservations, saying the request raised

troubling regulatory issues for the agency.

"It's just a new question for us," Selin said later in an interview. "We really haven't figured out the implications of this quite major change in the design approach."

But Selin said the commission would try to accommodate the Yucca Mountain planners.

"If the law permits it to happen, and our regulation doesn't ... then we'll change our regulation," he explained. "Our job is to accommodate the ... designer but maintain the public health and safety."



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 24, 1995

Ms. Judy Treichel  
Executive Director  
Nevada Nuclear Waste Task Force, Incorporated  
4550 W. Oakey Blvd  
Suite 111  
Las Vegas, Nevada 89102

Dear Ms. Treichel:

I am responding to your December 22, 1994 letter in which you seem to suggest that a remark I made at the December 19, 1994 Commission meeting with the Department of Energy (DOE) regarding DOE's program approach for determining site suitability for and licensing of a high-level radioactive waste repository signals a major shift in NRC's regulatory approach to the Yucca Mountain site. I am inferring that your concern with the remark is that NRC might attempt to change its regulations to eliminate from consideration valid technical issues at the Yucca Mountain site. This was not my intent nor does my remark indicate this when it is read in context.

The remark excerpted in the Las Vegas Review Journal article was focused on the structure of the existing NRC regulations for a geologic repository (first promulgated in 1983) and the regulations' applicability in light of experience gained over the past ten or so years. 10 CFR Part 60 was the staff's best attempt at the time to implement the responsibilities given to the NRC under the Nuclear Waste Policy Act. However, a geologic repository is a first-of-a-kind facility which will combine natural and engineered barriers to isolate radioactive waste for 10,000 years. This is a difficult task and it is not unreasonable to expect that the benefit of 10 years of experience in characterizing a candidate geologic repository site might suggest that parts of NRC's regulations need revision. If revisions to the regulations are consistent with the statutory framework and continue to protect public health and safety, but better reflect the realities of siting and licensing a geologic repository, then they can and should be made. In any event, you can be assured that if changes to Part 60 are anticipated, NRC will actively solicit public comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ivan Selin".

Ivan Selin

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# NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

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May 7, 1997

Dr. Shirley A. Jackson, Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 G15  
Washington, D.C. 20555-0001

Dear Dr. Jackson:

The Nevada Nuclear Waste Task Force is a primary contact point for Nevadans and groups and individuals nationwide who want information and opportunities for involvement in the federal high-level nuclear waste program. In order to serve in this capacity we attend meetings, hearings, briefings, etc. between the federal agencies involved in decision making regarding the proposed repository at Yucca Mountain and centralized interim storage facility at the Nevada Test Site (NTS) now being considered in Congress. We have been involved in this work for more than ten years.

As the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) programs have evolved over the last decade, we have become more aware of the growing cooperative efforts between OCRWM and the Nuclear Regulatory Commission (NRC) in what is known as the "pre-licensing phase" of the high-level nuclear waste program. We are very concerned about the lack of public involvement in this process. The most frequent justification stated for the close working relationship between DOE and NRC is that it will avoid surprises later during formal licensing proceedings. Many of these meetings and exchanges also deal with what is frequently referred to as "issue resolution." This term and the current process are matters of great concern to those of us who professionally oversee the program, and even more alarming for the public. There is growing suspicion among Nevadans and others that very important decisions that directly affect public health, safety, and well-being are being made without any public input.

All federal agencies are established and charged with the role of public service and protection. Nevadans continue to be told that the proposed high-level waste facilities and the activities associated with them should not be matters for public concern because they would have to be licensed by NRC. Furthermore NRC could not and would not license any facility without assurance of safe performance for whatever time period the site could pose a danger. If DOE is to be allowed to build one or more licensed high-level waste facilities; you, the licensing agency, must be sensitive to and aware of the public's expectations.

In order for the Commission and DOE to hear and consider the ideas and viewpoints of the public, we propose that two open and easily accessible meetings be held each year--one in Nevada and another in a transportation corridor city. At the Nevada meeting updates would be given by DOE and NRC on the status of pre-licensing activities regarding the proposed repository and/or the interim storage facility at the Nevada Test Site. The corridor city meeting would invite citizen comment and discussion regarding transport and cask certification issues. At each meeting DOE and NRC officials would answer audience questions and benefit from the insights of those who will be affected by the decisions made.

We are aware of the growing number of constraints being placed on the federal agencies involved in the high-level waste program--primarily time and money. These are easy limitations for the public to understand since they routinely work under them. The shortage of money and time must not result in inadequate consideration of all important parts of the program and the necessary public involvement. We believe that if the schedules are too short or funding inadequate, the very nature of this complicated one-of-a-kind program make it essential that the process be stopped. The transportation required to reach a national high-level nuclear waste repository or centralized interim storage facility in Nevada would affect many millions of Americans. NRC has never had to consider the licensing of a site with such long term or far reaching implications for so many people. The time allotted must be sufficient to establish a means for recognized, meaningful public involvement at the pre-licensing as well as the formal licensing phases.

Sincerely,

  
Judy Treichel  
Executive Director

cc:  
Senator Harry Reid  
Senator Richard Bryan  
Congressman John Ensign  
Congressman James Gibbons  
Congressman Edward Markey  
Governor Bob Miller  
Nuclear Waste Technical Review Board  
National Academy of Sciences/Board on Radioactive Waste Management  
Nuclear Information Resource Service  
Public Citizen/Critical Mass Energy Project  
US Public Interest Research Group  
Citizen Alert/Nevada



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 5, 1997

Ms. Judy Treichel, Executive Director  
Nevada Nuclear Waste Task Force, Inc.  
Alamo Plaza  
4550 W. Oakey Blvd., Suite 111  
Las Vegas, Nevada 89102

Dear Ms. Treichel:

I am responding to your letter of May 7, 1997, and I would like to thank you for the opportunity to address your concerns regarding public input activities related to the high-level waste (HLW) program. As stated in your letter, these concerns arose from your task force's role as a primary point of contact for residents of the State of Nevada and other interested parties, regarding information on the Federal HLW program. Specifically, you indicated that the working relationship between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) during the "pre-licensing phase" of the HLW program, and NRC's focus on "issue resolution," has made Nevadans and others suspicious that important decisions will be made without public input. In addition, you indicated that NRC, as the licensing agency, must be sensitive to and aware of the public's expectations in "pre-licensing" as well as the licensing process. As a result, you have proposed that two open and easily accessible meetings be held each year, one in Nevada and another in a transportation corridor city, so NRC and DOE can hear and consider the public's ideas and viewpoints.

As you are aware, from your experience over the past ten years in participating in meetings and other interactions involving the HLW program, NRC has a longstanding practice of both providing the public with the fullest information practicable on its activities, and of conducting business in an open manner (58 FR 48081). In keeping with this policy and to provide more opportunity for interaction with the public in this time of reduced budgets, NRC considers your suggestion worthy of careful consideration. As a first step toward implementation, NRC will include your proposal on the agenda of the next quarterly NRC and DOE management meeting, for discussion with DOE, State of Nevada, affected units of local government, and Indian Tribes. Dr. Michael J. Bell, Acting Chief, Performance Assessment and HLW Integration Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, will contact you directly to discuss this proposal further.

Sincerely,

Shirley Ann Jackson

cc: See list on next page

June 24, 1997

Mr. Ronald A. Milner, Director  
for Program Management and Integration  
Office of Civilian Radioactive Waste Management  
U.S. Department of Energy, RW 30  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**SUBJECT: NEVADA NUCLEAR WASTE TASK FORCE LETTER DATED MAY 7, 1997**

Dear Mr. Milner:

By letter dated May 7, 1997, Ms. Judy Treichel of the Nevada Nuclear Waste Task Force wrote to the Shirley Ann Jackson, Chairman, U.S. Nuclear Regulatory Commission expressing concerns regarding public input activities related to the high-level waste (HLW) program. A copy of this letter is provided for your information. In this letter, Ms Treichel indicated that the working relationship between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy (DOE) during the "pre-licensing phase" of the HLW program, and NRC's focus on "issue resolution," has made Nevadans and others suspicious that important decisions will be made without public input. As a result, she proposed that two open and easily accessible meetings be held each year, one in Nevada and another in a transportation corridor city, so NRC and DOE can hear and consider the public's ideas and viewpoints.

Chairman Jackson's response, dated June 5, 1997, indicated that in keeping with NRC's openness policy (58 FR 48081) and to provide more opportunity for interaction with the public in this time of reduced budgets, faced by all parties, NRC considered Ms Treichel's suggestion worthy of careful consideration. A copy of Chairman Jackson's letter is also enclosed. In a first step toward implementation of this suggestion, NRC will include the proposal on the agenda of the next quarterly NRC and DOE management meeting, for discussion with DOE, State of Nevada, affected units of local government, and Indian Tribes.

If you have further questions regarding this issue, please contact Sandra L. Wastler of my staff at (301) 415-6724.

Sincerely,

Michael J. Bell, Chief  
Performance Assessment and HLW  
Integration Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Enclosure: As stated  
cc: See attached list

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October 27, 2000

Richard A. Meserve  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman Meserve:

We met several months ago when you came to Nevada to meet with people who actively work on Yucca Mountain issues. At the time of our meeting you seemed surprised at the levels of skepticism and distrust that we had for the Nuclear Regulatory Commission. I am writing to explain a situation that is currently occurring that directly leads to our belief that the Commission is much more inclined to work with the Department of Energy than it is to representing the public.

Beginning this August, groups of DOE and NRC people have been meeting to discuss Key Technical Issues (KTI). Each meeting deals with a separate KTI and DOE attempts to convince the NRC that the issue being discussed can be considered "resolved or closed." As soon as this process began public interest groups and the State of Nevada objected to the NRC characterizing issues as "resolved or closed" before any licensing process. At the beginning of each meeting a disclaimer is read explaining that those terms only mean that there are no further questions at this time. If that were true, a more accurate term would be "currently acceptable."

The most glaring example of the extraordinary willingness on the part of the NRC to yield to DOE is the frequent determination that an issue is "closed-pending." At each meeting there is also a reading of NRC/DOE's definition of this term. Clearly, when this term is used, the issue is open. It seems to have been designed to make those at the table feel comfortable. It would be as accurate to say "open-pending" but there is no reason to do so - the matter is open. Although it is obvious that DOE and NRC are playing a word game, I am not writing to argue about semantics. I see a DOE/NRC cooperative effort. It was carried to its most ridiculous extreme at the meeting on criticality held October 23 and 24 when there was no data presented by the DOE and no analysis of how the issue of criticality had been examined and dealt with at Yucca Mountain. Instead DOE told NRC that the answers to all of their inquiries could be found in Topical Report, Rev. 01 which is about to be released. With no data or calculations to be reviewed by the NRC representatives, there could not be a determination of "closed pending" that complied

with the definition that was given. Both a representative of the State of Nevada and I commented to those at the table that under those circumstances, none of the issues could be "closed" or considered "closed-pending." But, at the end of the meeting, NRC determined that all of the issues were "closed-pending." When I discussed this with Jim Anderson at the meeting, he said that if the Topical Report did not answer all questions, then they would reopen the issues and hold another meeting. That is unacceptable. The issues should be open until all questions have been satisfactorily answered, and then the item can be considered "okay for now." There should not have been a meeting that took two days of all participants' time and travel expense when DOE and NRC were clearly not prepared for it. If NRC is not working cooperatively and exclusively with the Department, why are they willing to ignore comments from concerned observers and hand DOE the result that they wanted but had not earned?

Finally, during these meetings the NRC and DOE both spoke of meeting compliance with 10CFR part 63. The Nevada Nuclear Waste Task Force worked hard on, and participated in, public meetings and hearings on this proposed rule. In addition, we assisted many people who called for help in preparing written comments and who testified at the hearings. You received thoughtful, valuable comment from Nevadans, almost all of whom opposed portions of, or all of the proposed part 63. You have never responded to those comments. But, meanwhile we see the NRC and DOE cooperatively using that rule as it was drafted, to determine that Key Technical Issues at Yucca Mountain are "closed" or "closed-pending."

These are two very clear reasons why the people of Nevada do not trust the NRC and why we are increasingly skeptical regarding any licensing procedure. John Greeves and Bill Reamer repeatedly tell us that NRC wants to interact with the public here and they want the public to get to know the NRC. The examples that I have sited to you in this letter are showing the citizens of Nevada, much more clearly than informal public gatherings, just how the NRC works.

Sincerely,

Judy Treichel  
Executive Director



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 22, 2001

Ms. Judy Treichel, Executive Director  
Nevada Nuclear Waste Task Force  
Alamo Plaza  
4550 West Oakey Boulevard, Suite 111  
Las Vegas, Nevada 89102

Dear Ms. Treichel:

I am responding to your letter of October 27, 2000, concerning the resolution of issues related to the potential repository at Yucca Mountain, Nevada. Although the Nuclear Regulatory Commission (NRC) staff is available to discuss your concerns in detail, I will address several of the points you raised: NRC's relationship with the Department of Energy (DOE) during pre-licensing, NRC's issue resolution process including the use of terms such as "closed" or "closed-pending," and the status of the NRC's proposed site-specific rule for Yucca Mountain (10 CFR Part 63).

In your letter, you suggest that NRC is more inclined to work with the DOE than groups representing the public. I can assure you that this is not the case. The NRC values public participation in our regulatory process and we know that we must ensure that issues raised by all parties get fair and meaningful treatment. Nonetheless, under guiding statutes, DOE plays a unique role in the high-level waste program as a potential licensee. In the Nuclear Waste Policy Act of 1982, as amended (NWPA), Congress directed DOE to be involved with the NRC in prelicensing consultation on site characterization activities. Further, the NWPA limits the amount of time the NRC will have to evaluate a potential license application. Consequently, the purpose of this prelicensing consultation process is to allow the complex technical issues present at a potential geologic repository site to be addressed early so that potential health and safety issues are identified and receive the attention they deserve. Because DOE is the potential licensee and NRC technical staff would be the initial reviewer, detailed consultation with the NRC staff is necessary. The NRC staff strives to conduct its interactions with DOE in an open and objective manner.

You also express concern about NRC's issue resolution process, including in particular the terms that are used to document the status of technical concerns during prelicensing. In order to document the efforts in prelicensing consultation, the NRC staff maintains a list of Key Technical Issues and denotes their status. The fact that some technical issues are characterized as "closed" or "open" is a matter of NRC technical staff's bookkeeping at this stage of the process. Notwithstanding any such characterization, all issues will remain subject to further consideration during licensing if a license application for Yucca Mountain is received. However, we believe that you have identified a valid concern regarding our use of the term "closed-pending." To those not intimately familiar with the prelicensing program, the term might

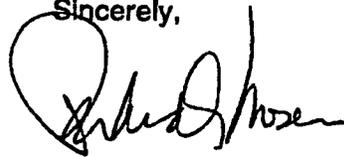
-2-

be understood to imply that more progress was made in closing an open issue than actually has occurred. Consequently, I have directed the staff to find more opportunities, within the context of its precicensing issue consideration, to convey the notion clearly and more routinely that the term "closed pending" is merely a bookkeeping term. The term means that DOE has agreed to provide information that, in the NRC staff's view, should close the issue, but, at the same time, this characterization does not imply that the staff has prejudged the outcome of the review of that information.

Finally, you note that the NRC has not yet responded to comments on its proposed site-specific rule for Yucca Mountain. The Commission currently has under consideration the staff's draft final rule and the response to all public comments. In the course of Commission action on the staff's proposal, all comments will be addressed. Of course, as you know, Part 63 will have to be conformed with the final Yucca Mountain standard when promulgated by the Environmental Protection Agency.

If you have any further questions or comments, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Meserve", written over a large, stylized heart shape.

Richard A. Meserve

cc: See attached list

Letter to J. Treichel from R. Meserve dated:

January 22, 2001

cc: Senator Harry Reid  
Representative Jim Gibbons  
R. Loux, State of Nevada  
L. Barrett, DOE/Wash, DC  
S. Hanauer, DOE/Wash, DC  
J. Carlson, DOE/Wash, DC  
A. Gil, YMPO  
S. Brocoum, YMPO  
S. Mellington, YMPO  
T. Gunter, YMPO  
J. Bailey, M&O  
M. Voegele, M&O  
B. Price, Nevada Legislative Committee  
D. Bechtel, Clark County, NV  
A. Kalt, Churchill County, NV  
L. Fiorenzi, Eureka County, NV  
B. Duke, Lander County, NV  
J. Wallis, Mineral County, NV  
M. Murphy, Nye County, NV  
B. Ott, White Pine County, NV  
W. Barnard, NWTRB  
A. Collins, NIEC  
J. Lyznicky, AMA  
F. Marcinowski, EPA  
R. McCullum, NEI  
J. Kessler, EPRI  
R. Craig, USGS  
J. Curtiss, Winston & Strawn

Senator John Ensign  
Representative Shelley Berkley  
S. Frishman, State of Nevada  
A. Brownstein, DOE/Wash, DC  
C. Einberg, DOE/Wash, DC  
N. Slater, DOE/Wash, DC  
R. Dyer, YMPO  
R. Clark, YMPO  
C. Hanlon, YMPO  
G. Dials, M&O  
D. Wilkins, M&O  
S. Echols, Winston & Strawn  
J. Meder, Nevada Legislative Counsel Bureau  
E. von Tiesenhausen, Clark County, NV  
G. McCorkell, Esmeralda County, NV  
A. Remus, Inyo County, CA  
J. Pitts, Lincoln County, NV  
L. Bradshaw, Nye County, NV  
J. McKnight, Nye County, NV  
D. Weigel, GAO  
R. Holden, NCAI  
R. Arnold, Pahrump County, NV  
R. Clark, EPA  
R. Anderson, NEI  
S. Kraft, NEI  
D. Duncan, USGS  
W. Booth, Engineering Svcs, LTD

# NRC denies any bias about Yucca Mountain

By STEVE TETREAU

DONREY WASHINGTON BUREAU

WASHINGTON — An official with the Nuclear Regulatory Commission says staff scientists won't hesitate to reject a proposed repository at Yucca Mountain in Nevada if they believe it unsuitable for nuclear waste storage.

Carl Paperiello, NRC deputy executive director in charge of waste management and spent fuel programs, told agency commissioners this week there is no pre-set view among staff that nuclear waste should be stored in Nevada.

Paperiello was questioned at a briefing before the five NRC commissioners Tuesday. He and other senior executives gave updates on various nuclear waste projects.

Commissioner Jeffrey Merrifield said he was concerned about allegations of political bias in the Yucca Mountain program, which is managed by the Department of Energy. He asked Paperiello if NRC staff had pre-set views on Yucca Mountain. Paperiello answered "definitely not."

A team from the Energy Department's Office of Inspector General is in Nevada interviewing government and contractor managers charged with determining whether the mountain ridge 100 miles northwest of Las Vegas can safely hold tens of thousands of tons of radioactive spent fuel for more than 10,000 years.

The probe follows charges by Nevada lawmakers that Yucca Mountain personnel have presupposed the site will be found suitable even though studies are not complete. Energy officials have denied that.

Federal law requires the NRC to monitor Energy Department studies and comment on them as the government explores digging out the first underground nuclear waste cavern.

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***Fax Transmittal***

Date: 12/2/05

To: Secretary  
US Nuclear Regulatory Commission

From: Judy Treichel

Pages including this cover \_\_\_\_\_

**Comments:**

*Comment on Federal Register Vol. 70, No. 173  
Proposed Rule - Implementation of a  
Dose Standard after 10,000 years - Yucca  
Mountain - 10 CFR Part 63*

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