

STATEMENT SUBMITTED
BY THE
UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

CONCERNING
S. 2589
NUCLEAR FUEL MANAGEMENT AND DISPOSAL ACT

PRESENTED BY
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Introduction

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to discuss S. 2589, the Nuclear Fuel Management and Disposal Act, which has several provisions that affect the Nuclear Regulatory Commission (NRC).

It is important to make clear at the outset that, because of the NRC's licensing and adjudicatory role in the national repository program, the NRC is not taking a position on most of the provisions in the legislation, which appear to be aimed at facilitating eventual operation of the proposed repository at Yucca Mountain.

However, some of those provisions, if enacted, could adversely impact the NRC's ability to meet its statutory obligations with respect to radioactive high-level waste. The Commission offers the following comments on provisions in the bill that would affect the timing of the Commission's review of a Department of Energy (DOE) application for a license to receive and store waste at the proposed Yucca Mountain high-level waste repository. These provisions are the subject of a letter we sent the Committee on June 30, 2006, and the points we are going to make here today are the points that we made in that letter.

Time Needed for Adequate Review

The Commission fully understands the importance of addressing the storage and disposal of high-level radioactive waste in a manner that is both safe and timely. The Commission has a record of moving responsibly and promptly to meet its obligations under the Nuclear Waste Policy Act. We continue our preparations for conducting an independent safety

review of a Yucca Mountain application. We are confident that we will be ready to receive an application that DOE now says it will submit to us in 2008. We are also confident that we will reach a decision on the application within the time constraints set forth in the Nuclear Waste Policy Act assuming DOE submits a high-quality license application.

At the same time, our long experience in dealing with applications for major nuclear projects has made us keenly aware of the level of effort required to conduct a thorough licensing review that meets our statutory obligations to protect public health and safety, and to promote the common defense and security. Our main concern here is that the NRC be given sufficient time to conduct a comprehensive review of DOE's applications.

Accordingly, we are concerned with Section 4(b) because it appears to give the NRC insufficient time to review an application to license receipt and possession of waste at the proposed repository. Section 4(b) imposes a 1-year limit (with the possibility of a six-month extension) on the NRC's licensing decision. This deadline does not appear achievable to us for at least three reasons.

First, the NRC staff's technical, environmental, and legal reviews are likely to take more than a year, particularly because the staff is almost certain to ask questions about the application, and to ask for additional information in support of the application. Even the staff's reactor renewal reviews, which are widely recognized as efficient, have required about two years for each application (22-30 months, depending upon whether a hearing is requested and granted), and yet those reviews focus on a relatively narrow range of issues at facilities we have regulated for several decades.

Second, even the informal adjudicatory proceeding called for in the bill would contain certain necessary processes that cannot be carried out quickly. For example, the bill provides for limited discovery; add to this the Commission's own default proceedings, which, though less formal than trial-type proceedings, nonetheless call for written testimony, allow for questioning by the presiding officer, and allow for appeal of the presiding officer's decision to the Commission. The NRC cannot complete, in one year, both the staff's safety review and the adjudicatory proceeding.

Third, another provision in Section 4 might increase the scope of the licensing decision, and thus the time needed to make the decision: Section 4(a) of the bill provides that an application for construction authorization "need not contain information on surface facilities other than surface facilities necessary for initial operation of the repository." This provision might be read simply to place certain surface facilities outside the NRC's jurisdiction, in which case the provision would reduce the time licensing might take; on the other hand, the provision might be read to provide for staged consideration of surface facilities. Under this latter interpretation, the NRC would review certain facilities as part of its decision on construction authorization, but review others during the later receipt and possession phase, with the result that Section 4(a) would increase the scope of the receipt and possession review, and yet Section 4(b) would decrease the time allowed for that review. The intent of this provision needs to be clarified. Section 4(b) also should be revised to make clear whether the use of informal proceedings in hearings is intended to apply to the multiple amendments to the license to receive and possess that are envisioned with a phased approach for the potential repository.

For these reasons, the NRC would urge that the time for deciding on the application to receive and possess waste be increased to two years after the docketing of the application, with the possibility of an extension of six months.

We appreciate the opportunity to appear before you today, and the Commission looks forward to continuing to work with the Committee on this proposed legislation. We welcome your comments and questions.