

EDO Principal Correspondence Control

FROM: DUE: 08/21/06 EDO CONTROL: G20060706
DOC DT: 08/09/06
FINAL REPLY:

Senator Pete V. Domenici

TO:

Chairman Klein

FOR SIGNATURE OF : ** GRN ** CRC NO: 06-0394

DESC:

ROUTING:

Post Hearing Qs from the August 3, 2006 Hearing on
S. 2589, to Enhance the Management and Disposal of
Spent Nuclear Fuel and High-Level Radioactive
Waste (Due to OCA: 8/21/06)

Reyes
Virgilio
Kane
Silber
Dean
Cyr/Burns
Rakovan, OEDO

DATE: 08/10/06

ASSIGNED TO: CONTACT:

NMSS
NRR

Strosnider
Dyer

SPECIAL INSTRUCTIONS OR REMARKS:

Respond to Qs using the attached format and provide
to Lance Rakovan, OEDO by 10:00 a.m.,
August 21, 2006. Note: Due to OCA by August 21,
2006.

Template: SECY-017

E-RIDS: SECY-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Aug 09, 2006 17:15

PAPER NUMBER: LTR-06-0394 **LOGGING DATE:** 08/09/2006
ACTION OFFICE: OCA *1 EDO*
AUTHOR: SEN Pete Domenici
AFFILIATION: CONG
ADDRESSEE: Dale Klein
SUBJECT: Post hearing questions from the Aug. 3, 2006 hearing regarding S. 2589, to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, etc;
ACTION: Signature of Director, OCA
DISTRIBUTION: RF, EDO...
LETTER DATE: 08/09/2006
ACKNOWLEDGED: No
SPECIAL HANDLING:
NOTES: OCA should coordinate response with the EDO
FILE LOCATION: ADAMS
DATE DUE: 08/23/2006 **DATE SIGNED:**

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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

ENERGY.SENATE.GOV

August 9, 2006

The Honorable Dale Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

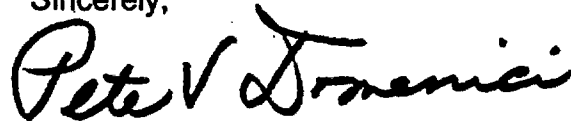
Dear Chairman Klein:

I would like to take this opportunity to thank you for sending Mr. Martin Virgilio to appear before the Senate Committee on Energy and Natural Resources on Thursday, August 3, 2006 to give testimony regarding S. 2589, to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to ensure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Friday, August 25, 2006.

Thank you in advance for your prompt consideration.

Sincerely,



Pete V. Domenici
Chairman

Questions for the Record
Senator Bingaman

Martin Virgilio
Deputy Executive Director for Materials, Research, State and Compliance
Programs
U.S. Nuclear Regulatory Commission

NMSS

1. The Nuclear Waste Policy Act defines a "repository" to include "both surface and subsurface" areas, but section 4(a) of S. 2589 would exclude any "surface facility" that is not "necessary for initial operation of the repository" from consideration as part of the license application. The Commission has said, both in Chairman Diaz's, June 30 letter and in Mr. Virgilio's statement, that this provision can be read to "place certain surface facilities outside the NRC's jurisdiction."

- Please identify the types of facilities that this provision may exclude from the Commission's jurisdiction.
- Would the provision enable the Department to exclude plans to construct spent fuel storage facilities from the license application on the grounds that interim storage facilities are not "necessary for initial operation of the repository"?
- How might this provision affect the Commission's statutory responsibility to protect the health and safety of the public?

NMSS/
NRR

2. Section 4(b) of S. 2589 authorizes DOE to "undertake infrastructure activities" at the repository without the NRC's prior approval.

• How does this provision compare with the NRC's "limited work authorization" rule for nuclear power plants? The limited work authorization rule requires an NRC licensing board to make a preliminary safety determination and environmental findings and the NRC regulatory staff to approve the activity before the applicant can begin work, does it not? Where are the similar protections in section 4(b)?

• Would section 4(b) enable the Department to construct spent fuel storage facilities at the repository before applying to the Commission for a license to receive and possess spent fuel at the site?

NMSS

3. As I understand it, the NRC generally regulates transportation packaging and security, and the Department of Energy regulates shippers and routing.

- How does section 7 affect this division of authority?
- Does the Atomic Energy Act give the NRC the authority, and does it have the expertise, to regulate shipping routes?

NMSS

4. Under current law, the NRC can license new nuclear power plants, even though a nuclear waste repository is still not available, on the basis of the Commission's "waste confidence" rule, which says that the Commission has a reasonable assurance that a repository will be available soon. Section 9 requires the Commission to "deem" that sufficient disposal capacity will be available "without further consideration."

- Does the Commission support section 9?
- The court decision that gave rise to the Commission's waste confidence rulemaking found "no implication that Congress intended that the NRC ignore new knowledge or analysis in its licensing decisions." Minnesota v. NRC, 602 F.2d 412, 419 (D.C. Cir. 1979). Section 9 would require the Commission to ignore new knowledge or analysis on the availability of waste disposal capacity in its reactor licensing decisions, would it not?
- How can the Commission discharge its statutory responsibility to ensure adequate protection of the health and safety of the public if it is forbidden to consider whether there is reasonable assurance that adequate waste disposal capacity will be available in the foreseeable future?

SPECIAL FORMAT FOR McDADE'S Q&As

MR. McDADE: (Or other member of Congress asking question). McDade questions are assigned to various office for preparation of the answers.

(A) What is the typing format for responding to McDade questions?

CHAIRMAN [SURNAME]:

Q&As are to be typed on word processing equipment (WordPerfect) and provided to the EDO both by hard copy and a 3.5 inch diskette (as directed on Green Control Ticket under Special Instructions or Remarks). Type each Q&A as a separate job (including multiple parts, [A, B, C, etc.]), to aid in later revisions and transmission of Q&As to Congressional Affairs. Use 11 pitch, Arial type style, initial caps only, and double spacing. Use four spaces between each paragraph. Side margins are 1-inch for both left and right; and 1-inch for the top and bottom margins. Do not use a required return after each typed line.

Identify questions at bottom right margin on each page in the footer text, indicating Question No. and Part, Committee, originating Office (not Division or Branch). Current date should appear directly below Question No. Subsequent revisions should reflect the revised date.

If succeeding pages are required in answering the question, the page number should be typed in the header margin text area, so that it appears at the top of each succeeding page (see Page 2).

Question 1(A)/McDade/NRR
08/06/98

If enclosures are to be included with a response, indicate on Q&A (as shown below) and type question number and part (A, B, C, etc., as appropriate) on each enclosure. Three copies of each enclosure are required. Also, provide an electronic copy of the enclosure, if possible.

Enclosure:

Sample Q&A Format