

September 18, 2006

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

SUBJECT: COMMENTS ON THE U.S. NUCLEAR REGULATORY COMMISSION'S
AUGUST 10, 2006, LETTER TO THE U.S. DEPARTMENT OF ENERGY, ON
THE TRANSPORTATION, AGING, AND DISPOSAL CANISTERS

Dear Ms. Treichel:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your August 17, 2006, letter, to Chairman Dale E. Klein, providing comments on the subject letter and its enclosures. Your letter addressed the applicable regulatory criteria for the proposed aging facility, within the Geologic Repository Operations Area, at the proposed Yucca Mountain Repository. Specifically, you questioned the intent of footnote number 2, in the table enclosed to our letter of August 10, 2006. Your letter also expressed concern about the openness of NRC's regulatory process during the prelicensing phase, and conclusions or decisions made on important issues before receipt of the license application (LA).

In addition to the above-referenced letter, your letter refers to NRC statements made at the February 3-4, 2004, technical exchange, between NRC and the U.S. Department of Energy (DOE), and a follow-up letter of April 19, 2004, from NRC to you. The above-mentioned NRC statements and letter were made with respect to DOE's statement that the design of a potential repository at Yucca Mountain would include an aging facility as part of the surface facilities. During the February 3-4, 2004, technical exchange you asked whether the NRC would review a surface aging facility as part of the LA under 10 CFR Part 63 or as a discrete facility under 10 CFR Part 72. In a letter dated April 19, 2004, Mr. Reamer stated, "The NRC will review the proposed LA, in its entirety, in accordance with the requirements of 10 CFR Part 63. If the LA includes a surface aging facility, NRC will review that facility to determine whether it complies with 10 CFR Part 63." The letter also indicated that, under 10 CFR Part 63, a Geologic Repository Operations Area has both surface and subsurface facilities and that a surface aging facility could be integral to waste handling at the proposed repository.

The footnote in the August 10, 2006, letter is not inconsistent with the April 19, 2004, letter. If DOE's LA contains a repository design that includes a surface aging facility, the NRC would evaluate the facility to determine whether it complies with the requirements of 10 CFR Part 63.

As noted in the April 19, 2004, letter, the NRC staff is fully aware that section 141(g) of the Nuclear Waste Policy Act and 10 CFR Part 72.96 expressly prohibit co-location of a monitored retrievable storage facility at the proposed repository. The NRC will carefully review any DOE LA to determine whether the proposed action satisfies applicable statutory and regulatory requirements.

J. Treichel

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In response to your concern that decisions are being made, between NRC and DOE, outside the public view, let me confirm that no NRC conclusions or decisions on the aging facility have been made. The NRC will perform an objective review of the LA at the time it is submitted. The precicensing discussions and technical exchanges between NRC and DOE are conducted in public forums consistent with the NRC's strategic goal of ensuring openness in our regulatory process. We will continue efforts to inform and involve the public and stakeholders in the NRC's regulatory process, as appropriate.

If you have further questions or comments, please contact Mr. Lawrence E. Kokajko, of my staff, at (301) 415-7275.

Sincerely,

/RA/

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

cc: See enclosed list

Letter to J. Treichel from J. Strosnider dated: September 18, 2006

cc:

A. Kalt, Churchill County, NV	A. Elzeftawy, Las Vegas Paiute Tribe
R. Massey, Churchill/Lander County, NV	J. Treichel, Nuclear Waste Task Force
I. Navis, Clark County, NV	W. Briggs, Ross, Dixon & Bell
E. von Tiesenhausen, Clark County, NV	R. Murray, DOE/OCRWM
G. McCorkell, Esmeralda County, NV	G. Runkle, DOE/Washington, D.C.
R. Damele, Eureka County, NV	C. Einberg, DOE/Washington, D.C.
L. Marshall, Eureka County, NV	S. Gomberg, DOE/Washington, D.C.
A. Johnson, Eureka County, NV	W. J. Arthur, III , DOE/OCRWM
S. Schubert, Sen. Reid's Office	R. Dyer, DOE/OCRWM
M. Yabro, Lander County, NV	J. Espinoza, GAO
J. Donnell, DOE/OCRWM	A. Gil, DOE/OCRWM
M. Baughman, Lincoln County, NV	W. Boyle, DOE/OCRWM
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E. Sproat, DOE/OCRWM	N. Hunemuller, DOE/OCRWM
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S. Frishman, State of NV	L. Rasura-Alfano, Lincoln County, NV
S. Lynch, State of NV	J. Kennedy, Timbisha Shoshone Tribe
P. Guinan, Legislative Counsel Bureau	B. Durham, Timbisha Shoshone Tribe
R. Clark, EPA	R. Arnold, Pahrump Paiute Tribe
R. Anderson, NEI	J. Birchim, Yomba Shoshone Tribe

cc: (Continued)

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J. Kessler, EPRI

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K. Skipper, USGS

W. Booth, Engineering Svcs, LTD

C. Marden, BNFL Inc.

J. Bacoach, Big Pine Paiute Tribe of the Owens Valley

P. Thompson, Duckwater Shoshone Tribe

T. Kingham, GAO

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E. Hiruo, Platts Nuclear Publications

G. Hernandez, Las Vegas Paiute Tribe

K. Finrock, NV Congressional Delegation

P. Johnson, Citizen Alert

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J. Williams, DOE/Washington, DC

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S. Rayborn, Sen. Reid's Office

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J. Brandt, Lander County

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V. Trebules, RW/DOE

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C. Meyers, Moapa Paiute Indian Tribe

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D. Vega, Bishop Paiute Indian Tribe

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J. Leeds, Las Vegas Indian Center

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R. Joseph, Lone Pine Paiute-Shoshone Tribe

L. Tom, Paiute Indian Tribes of Utah

E. Smith, Chemehuevi Indian Tribe

D. Buckner, Ely Shoshone Tribe

V. Guzman, Walker River Paiute

D. Eddy, Jr., Colorado River Indian Tribes

M. Boyd, Public Citizen

J. Wells, Western Shoshone National Council

D. Crawford, Inter-Tribal Council of NV

I. Zabarte, Western Shoshone National Council

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P. Golan, DOE

M. Rice, Lincoln County, NV

G. Hellstrom, DOE

S. Joya, Sen. Ensign's Office

M. Gaffney, Inyo County

L. Desell, RW/DOE

R. List, Esmeralda County

D. Curran, Harmon, Curran, Spielberg & Eisenberg, L.L.P.

Lisa Mascaro, Washington Correspondent
Las Vegas Sun, Washington, DC

In response to your concern that decisions are being made, between NRC and DOE, outside the public view, let me confirm that no NRC conclusions or decisions on the aging facility have been made. The NRC will perform an objective review of the LA at the time it is submitted. The precicensing discussions and technical exchanges between NRC and DOE are conducted in public forums consistent with the NRC's strategic goal of ensuring openness in our regulatory process. We will continue efforts to inform and involve the public and stakeholders in the NRC's regulatory process, as appropriate.

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Sincerely,

/RA/

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

cc: See enclosed list

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