

September 18, 2006

Robert R. Loux, Executive Director
Agency for Nuclear Projects
Office of the Governor
State of Nevada
1761 E. College Parkway - Suite 118
Carson City, NV 89706

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 Mr. Loux:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your August 18, 2006, letter, to Chairman Dale E. Klein, providing comments on the subject letter and its enclosures. Specifically, you stated that a footnote stating "...aging at proposed Yucca Mountain Repository will be governed by 10 CFR Part 63" is premature and incorrect. This footnote (number 2) was part of the table entitled "NRC Regulatory Criteria Applicable to a Transportation, Aging, and Disposal Canister," enclosed with the letter of August 10, 2006. Your letter also refers to NRC statements, at the February 3-4, 2004, technical exchange, between NRC and U.S. Department of Energy (DOE), and a follow-up letter of April 19, 2004, from NRC to Ms. J. Treichel, who posed a question on the aging facility at the technical exchange. 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 incident to waste handling.

During the February 3-4, 2004, technical exchange Ms. Treichel asked whether the NRC would review a surface aging facility as part of the license application (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.

R. Loux

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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.

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 R. Loux 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. Yarbro, Lander County, NV	J. Espinoza, GAO
J. Donnell, DOE/OCRWM	A. Gil, DOE/OCRWM
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M. Simon, White Pine County, NV	A. Benson, DOE/OCRWM
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R. Herbert, NV Sen. Reid's Office	S. Cereghino, BSC
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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)

R. McCullum, NEI

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J. Kessler, EPRI

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C. Marden, BNFL Inc.

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

P. Thompson, Duckwater Shoshone Tribe

T. Kingham, GAO

D. Feehan, GAO

E. Hiruo, Platts Nuclear Publications

G. Hernandez, Las Vegas Paiute Tribe

K. Finrock, NV Congressional Delegation

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J. Williams, DOE/Washington, DC

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R. Holland, Inyo County

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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

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G. Hellstrom, DOE

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R. List, Esmeralda County

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

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

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.

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Sincerely,

/RA/

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

cc: See enclosed list

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