

September 18, 2006

Martin G. Malsch, Esq.
Egan, Fitzpatrick, Malsch & Cynkar, PLLC
The American Center at Tysons Corner
8300 Boone Boulevard - Suite 340
Vienna, VA 22182

SUBJECT: THE U.S. NUCLEAR REGULATORY COMMISSION'S CONSIDERATION OF
THE USE OF EXPERT ELICITATION IN THE LICENSING PROCESS FOR A
POTENTIAL HIGH-LEVEL RADIOACTIVE WASTE REPOSITORY AT YUCCA
MOUNTAIN

Dear Mr. Malsch:

I am responding to your letter dated, August 11, 2006, regarding the U.S. Department of Energy's (DOE's) use of expert elicitation in the development of its license application for Yucca Mountain. Specifically, you requested that the U.S. Nuclear Regulatory Commission (NRC) advise the DOE that it is unacceptable to use unqualified data through the expert elicitation process. You also expressed concern that the NRC's guidance on the expert elicitation process is ambiguous.

As such time as DOE submits a license application, the NRC expects it to be a high-quality application that would include technical analyses based upon, for example, software, models, and data that are reliable, transparent, and traceable. The NRC will, to the extent necessary and appropriate, perform independent activities including reviewing data and quality assurance processes as part of the license application review.

As part of our prelicensing interactions activities, the NRC staff, among other things, monitors DOE's implementation of its quality assurance program, and has communicated the results in NRC observation audit reports and other documents which are available on the NRC website at www.nrc.gov. The staff will continue to monitor implementation of DOE's quality assurance program as part of our prelicensing activities with DOE. The NRC will be mindful of the concerns raised in your letter during our review of any license application submitted by DOE. In keeping with our customary practice, we will take those steps that may be necessary to

M. Malsch

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determine whether appropriate qualified data and processes were used in developing the information submitted in any license application.

We appreciate you bringing this information to our attention. If you have any questions regarding this matter, please contact Melanie Wong, of my staff, at 301-415-6262 or by email at mcw@nrc.gov.

Sincerely,

/RA/

Lawrence E. Kokajko, Deputy Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: See enclosed list.

Letter to M. Malsch from L. E. Kokajko dated: September 18, 2006

cc:

A. Kalt, Churchill County, NV	A. Elzeftawy, Las Vegas Paiute Tribe
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R. Clark, EPA	R. Arnold, Pahrump Paiute Tribe
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cc: (Continued)

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J. Bacocho, 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
P. Johnson, Citizen Alert
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J. Williams, DOE/Washington, DC
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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

M. Malsch

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determine whether appropriate qualified data and processes were used in developing the information submitted in any license application.

We appreciate you bringing this information to our attention. If you have any questions regarding this matter, please contact Melanie Wong, of my staff, at 301-415-6262 or by email at mcw@nrc.gov.

Sincerely,

/RA/

Lawrence E. Kokajko, Deputy Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: See enclosed list.

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