

EDO Principal Correspondence Control

FROM: DUE: 10/25/06

EDO CONTROL: G20060824
DOC DT: 09/28/06
FINAL REPLY:

Robert R. Loux, Executive Director
Office of the Governor, NV

TO:

Chairman Klein

FOR SIGNATURE OF :

** GRN **

CRC NO: 06-0502

Strosnider, NMSS

DESC:

Comments on the U.S. Nuclear Regulatory
Commission's September 18, 2006 Letter on a
Possible Aging Facility at Yucca Mountain

ROUTING:

Reyes
Virgilio
Kane
Silber
Johnson
Burns
Cyr, OGC
Miller, FSME
Mallett, RIV

DATE: 10/06/06

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

Add EDO and Commission on for concurrence.
Chairman/Commissioners to review prior to signature
and dispatch.

Coordinate with OGC.

Template: SECy-017

ERids: SECy-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Oct 04, 2006 17:09

PAPER NUMBER: LTR-06-0502 **LOGGING DATE:** 10/04/2006
ACTION OFFICE: EDO

AUTHOR: Robert Loux
AFFILIATION: NV NWPO
ADDRESSEE: Dale Klein
SUBJECT: Comments on the NRC's 9/18/2006 ltr on a possible aging facility at Yucca Mountain

ACTION: Direct Reply
DISTRIBUTION:

LETTER DATE: 09/28/2006
ACKNOWLEDGED No
SPECIAL HANDLING: Commission should review response prior to dispatch

NOTES: RF, SECY to Ack
EDO should coordinate response with OGC..
OCM #349

FILE LOCATION: ADAMS

DATE DUE: 10/27/2006 **DATE SIGNED:**

EDO --G20060824



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September 28, 2006

Chairman Dale Klein
US Nuclear Regulatory Commission
Washington DC 20555

SUBJECT: COMMENTS ON THE U.S. NUCLEAR REGULATORY COMMISSION'S
SEPTEMBER 18, 2006 LETTER ON A POSSIBLE AGING FACILITY AT YUCCA
MOUNTAIN

Dear Chairman Klein:

I am writing in response to the September 18 letter you had the staff write to me on the issue of how to handle an aging facility at Yucca Mountain. The very name "aging" makes clear that what is involved is not a normal storage facility that would be associated with a repository in order to account for variations in inflow of spent fuel. Aging facility is just another name for Monitored Retrievable Storage, which is *per se* prohibited by the Nuclear Waste Policy Act to be sited in Nevada.

Whether or not you share this view, it is clear from the NRC letter that the agency understands that there is a line between what sort of storage is allowed by law at the site and what is not. It is essential that you publicly communicate that view to the Department of Energy to avoid extremely serious difficulties in any licensing review that may take place. I realize that the NRC is reluctant to deal with the issue in advance of a license application but there are several reasons why it is important that you do so now.

If DOE takes a more expansive view on what sort of storage is permissible than you do, and designs its surface facilities accordingly, you will face a difficult dilemma. You will either have to force them to redesign, and possibly redo their entire strategy with consequent delay, or you will be put in the position of accepting the impermissible facility as an accomplished fact.

CHAIRMAN REC'D
66 OCT -4 AM 9:11

We are especially concerned with the latter possibility, in which case our rights will have been curtailed. We are also concerned that NRC will from the first go along with DOE's reading the prohibition on an MRS out of the NWPA. If that is indeed your view the NRC should make it clear early so that the State has the opportunity to protect its rights. That would also be the more efficient way to resolve any difference.

This is a vitally important issue that we intend to pursue. It would be best if the NRC, in the spirit of openness and public interest, would take the initiative in addressing it.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a long horizontal flourish extending to the right.

Robert R. Loux
Executive Director