

December 4, 2006

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

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

Dear Mr. Loux:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your September 28, 2006 letter to Chairman Klein. Your letter stated that NRC should publicly communicate to the U.S. Department of Energy (DOE) its view regarding what surface storage is allowed by law at Yucca Mountain, and what is prohibited, "to avoid extremely serious difficulties in any licensing review that may take place." You contend that if DOE's view of what storage is permissible is more expansive than NRC's, then NRC "will either have to force [DOE] to redesign, and possibly redo [its] entire strategy with consequent delay, or [NRC] will be put in the position of accepting [an] impermissible facility as an accomplished fact." You also expressed concern "that NRC will from the first go along with DOE's reading the prohibition on [a monitored retrievable storage facility] out of the [Nuclear Waste Policy Act]."

Surface storage of spent fuel is permissible, under 10 CFR Part 63, to the extent such storage is integral to waste handling and disposal at the proposed repository. Such storage may also be integral to the thermal-loading strategy the applicant may adopt in its design of the entire repository system.

If DOE applies for a license for a repository at Yucca Mountain, NRC fully expects that DOE would seek authorization for a facility that complies with Federal law. If the application includes an aging facility, the NRC staff would review that facility in the context of the overall repository design to determine if it is integral to waste handling and disposal at the proposed repository, and for compliance with NRC's regulations at 10 CFR Part 63. As I noted in my September 18, 2006 response to your August 18, 2006 letter, the NRC staff is fully aware that section 141(g) of the Nuclear Waste Policy Act clearly forbids construction of a monitored retrievable storage facility in a State in which a repository is proposed, and NRC's regulations reflect this prohibition at 10 CFR 72.96.

-2-

If you have any further questions or comments, please contact Mr. Lawrence E. Kokajko, Director of the Division of High-Level Waste Repository Safety, at 301-415-6537.

Sincerely,

***/RA/***

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

If you have any further questions or comments, please contact Mr. Lawrence E. Kokajko, Director of the Division of High-Level Waste Repository Safety, at 301-415-6537.

Sincerely,

**/RA/**

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

**DISTRIBUTION: G20060824**

HLWRS r/f    NMSS r/f    EDO r/f    RidsEdoMailCenter    HLWRS Staff  
RidsNmssOd MRodgers    RidsOGCMailCenter    SECY-LTR-06-0502  
RidsSecyCorrespondenceMailCenter

**ML062970226**

<b>OFFICE</b>	HLWRS	TECH ED	HLWRS	HLWRS	HLWRS	OGC
<b>NAME</b>	JKotra	EKraus	SRohrer	NStablein	AMohseni	MZobler
<b>DATE</b>	10/17/06	10/17/06	10/18/06	10/18/06	10/18/06	10/18/06
<b>OFFICE</b>	HLWRS	NMSS	DEDMRS	EDO	OCM	NMSS
<b>NAME</b>	AMohseni for LKokajko	JStrosnider	MVirgilio	L.Reyes (WFKane for)	DKlein	JStrosnider
<b>DATE</b>	10/18/06	10/20/06	10/27/06	10/27/06	11/30/06	12/4/06

OFFICIAL RECORD COPY