January 25, 2007

Mr. Frank Perna
4398 Fernbrook Road
Las Vegas, NV 89103-4216

SUBJECT RESPONSE TO YOUR LETTER DATED OCTOBER 13, 2006

Dear Mr. Perna:

Thank you for your letter informing us of your concerns about the U.S. Department of Energy's (DOE's) nuclear waste transportation communications and about the need for scientific and regulatory integrity in the Yucca Mountain project.

You indicated in your letter that you believe DOE fails to include tribes in discussions about transporting nuclear waste to Yucca Mountain. You believe the U.S. Nuclear Regulatory Commission (NRC) should ensure that DOE notify tribes and seek their views. The NRC has no regulatory authority to require DOE to ensure tribal participation in DOE's transportation activities. That being said, we understand DOE has an active outreach program to identify tribes that might be affected by the transport of spent fuel to Yucca Mountain and to provide a forum for tribes to discuss issues of concern. We also note that DOE has a long-standing policy of notifying tribes of shipments of spent nuclear fuel that traverse or pass near tribal lands. Additional information on DOE's ongoing interactions with Native American tribes, as well as DOE's policy for dealing with tribal governments, can be found at the following Web site: http://www.tecworkinggroup.org/tribal.html. Should you need additional information about DOE's activities in this regard, we encourage you to contact DOE's Office of Civilian Radioactive Waste Management at the e-mail address and phone number given on the Web site.

For actions within the NRC's regulatory purview, the NRC strives to ensure openness in its regulatory process. We have conducted workshops and meetings to encourage tribal participation in areas under NRC jurisdiction. Most recently, the Agency invited members of several tribes to attend meetings with NRC representatives during the week of December 3, 2006. Representatives of the Timbisha Shoshone responded affirmatively to this invitation, and we invited those unable to meet individually to attend an NRC Open House on December 7, 2006. NRC staff met with members of the Timbisha Tribal Council at the Timbisha Shoshone Settlement on December 6, 2006. The safety of transporting spent nuclear fuel was among the many issues discussed. The NRC's distribution list includes many tribes that have expressed interest, and these tribes routinely receive communications about Yucca Mountain topics and planned NRC activities.

You also stressed that it is important that DOE adhere to sound scientific principles and methods. You stated your belief that the NRC should oversee the actions of DOE's Inspector General, and you expressed frustration about the role that politics can play in scientific activities relating to Yucca Mountain. We agree integrity and sound science are important. The NRC is an independent regulatory agency whose primary mission is to protect the public health and safety. If DOE files an application to build a repository at Yucca Mountain, the NRC will

conduct a detailed technical review, followed by a formal and fair public hearing. If DOE becomes a licensee, the NRC will exercise its full regulatory authority to ensure the safe construction and operation of the proposed repository. The NRC does not have the authority to oversee DOE Inspector General activities.

You raised concerns about the risk of terrorism and accidents associated with trans-national transport of nuclear waste. The transportation casks that would be used for both international and domestic shipments of spent fuel and high-level waste would be designed to meet very rigorous safety standards. These standards were developed to ensure that such casks would withstand very severe credible transportation accidents and would also provide substantial protection against credible sabotage and terrorist events. We believe that the robustness of spent fuel cask designs, coupled with adequate physical protection measures during shipment, would result in a very low likelihood of a terrorist or sabotage event that could release a significant amount of radioactive material.

You also expressed concern about U.S. foreign policy as it relates to reprocessing spent nuclear fuel and the international sharing of nuclear technology and materials. The NRC does not have the authority to determine U.S. foreign policy.

Lastly, you asked how the proposed repository design can be expanded, the waste storage capacity increased, and other upgrades completed without NRC approval. The Nuclear Waste Policy Act (as amended) allows for the disposal of no more than 70,000 metric tons (77,000 tons) of waste in a repository at Yucca Mountain, subject to NRC licensing. The NRC will begin its licensing review to assess the safety of DOE's design for a potential Yucca Mountain repository only after DOE submits a license application. If the U.S. Congress elects to raise the potential capacity of the repository, it would need to pass new legislation to amend the current statutory limit of 70,000 metric tons.

In closing, I want to thank you again for bringing your concerns to the NRC's attention. If you have any further questions or comments, please feel free to contact Dr. Janet P. Kotra of my staff. You can reach Dr. Kotra through the NRC operator, at 1-800-368-5642, or via e-mail, at jpk@nrc.gov.

Sincerely,

/RA/

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

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