

EGAN, FITZPATRICK & MALSCH, PLLC

Counselors at Law

2001 K Street, N.W. • Suite 400
Washington, D.C. 20006
Tel: (202) 662-2103
Fax: (202) 662-2105

www.nuclearlawyer.com

1777 N.E. Loop 410 • Suite 600
San Antonio, Texas 78217
Tel: (210) 820-2667
Fax: (210) 820-2668

Joseph R. Egan
Martin G. Malsch

Charles J. Fitzpatrick

March 14, 2007

Mr. Jack Strosneider
Director, NMSS
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Quality Assurance Requirements for DOE's Yucca Mountain License Application

Dear Mr. Strosneider:

As you know, from the very beginning of the Yucca Mountain Project, DOE has been unable to implement adequately a compliant quality assurance program for the information, analysis and other materials that will support its License Application ("LA"). This history is documented in the GAO's recent report, "Yucca Mountain, Quality Assurance at DOE's Planned Nuclear Waste Repository Needs Increased Management Attention," March 2006, and in a string of previous GAO reports. GAO recommends that increased DOE management attention is needed. But the problem is far deeper than that. For decades, successions of DOE OCRWM Directors and other Project managers have sworn that they are fully aware of the quality assurance implementation problems at Yucca and will fix them, all to no avail. Which raises the question, will the LA itself and, most importantly, the Safety Analysis Report, be subject to adequate quality assurance?

Surprisingly, internal Program documents suggest that DOE does *not* treat the LA as subject to its quality assurance program (documented in its Quality Assurance Requirements and Description document, or "QARD," and numerous revisions thereto, approved by NRC Staff). Nevada does not have access to DOE's current planning documents, but Bechtel/SAIC Company's April 2003 "Management Plan for Development of the Yucca Mountain LA" (DEN001315478), prepared at DOE's request to supersede YMP/97-02, suggests a serious problem may exist. This Plan provides specifically in Section 5.1 that the "LA is not subject to the requirements of the QARD, as previously determined by an activity evaluation performed in accordance with procedures in effect at that time." Other Project documents indicate that excluding the LA

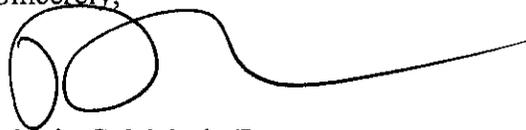
from the QARD was no accident. DEN001189982 is an internal memo that reflects an earlier DOE decision bragging that it “got us out of ‘QA regulatory space.’”

Since the LA is *the* operative and single most important regulatory document concerning the repository, which will draw numerous technical and safety conclusions based on the source documents, and will (if ultimately approved) control the actual conduct of the licensed activity under 10 C.F.R. § 63.44, it is difficult to imagine how the referenced “activity evaluation” could have concluded that the LA itself, and especially the Safety Analysis Report that is a key part of the LA, is not subject to QA requirements.

The referenced Plan goes on to state that the LA source documents designated as quality-affecting *will* be subject to the QARD. The Plan also states that “[p]reparation and review of the draft LA and its individual sections and chapters, however, are subject to appropriate management and document quality controls, as described in this management plan, to ensure transparency, traceability, accuracy, and completeness of the information presented.” This recognizes implicitly that the LA is no less quality-affecting than its source documents that *are* subject to the QARD, and that the important requirements of the QARD (traceability, *etc.*) must logically apply. However, there can be a world of difference between applying the QARD and applying requirements that facially resemble those in the QARD while not fully applying the QARD itself.

In light of the above, Nevada respectfully requests NRC Staff to require DOE to justify formally its decision that the preparation of the LA is not a quality affecting activity subject to the QARD, including an evaluation of the differences between the quality requirements of its current LA Plan and the most recent QARD and of how those differences may impact safety. Nevada regards this as one of the most important aspects of the upcoming proceeding, and it intends to challenge any determination by DOE or NRC that the LA is not fully subject to Quality Assurance requirements.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long, sweeping horizontal line that tapers to the right.

Martin G. Malsch, Esq.
EGAN, FITZPATRICK & MALSCH, PLLC
2001 K St. N.W., Suite 400
Washington, D.C. 20006
(202) 662-2103 telephone
(202) 662-2105 facsimile

Counsel for the State of Nevada

Date: March 14, 2007

cc: Mr. Ward Sproat, Director
OCRWM
U.S. Department of Energy
1000 Independence Ave. S.W.
Washington, D.C. 20585

Dr. Michael T. Ryan, Chairman
U.S. Nuclear Regulatory Commission
Advisory Committee on Nuclear Waste
Washington, D.C. 20555

Dr. B. John Garrick, Chairman
Nuclear Waste Technical Review Board
2300 Clarendon Blvd., Suite 1300
Arlington, VA 22201