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ADDRESSEE: Dale Klein

SUBJECT: Post hearing questions from the Aug. 3, 2006 hearing regarding S. 2589, to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, etc;

ACTION: Signature of Director, OCA

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# United States Senate

COMMITTEE ON  
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

ENERGY.SENATE.GOV

August 9, 2006

The Honorable Dale Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

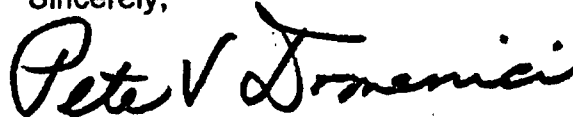
Dear Chairman Klein:

I would like to take this opportunity to thank you for sending Mr. Martin Virgilio to appear before the Senate Committee on Energy and Natural Resources on Thursday, August 3, 2006 to give testimony regarding S. 2589, to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to ensure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Friday, August 25, 2006.

Thank you in advance for your prompt consideration.

Sincerely,



Pete V. Domenici  
Chairman

Questions for the Record  
Senator Bingaman

Martin Virgilio  
Deputy Executive Director for Materials, Research, State and Compliance  
Programs  
U.S. Nuclear Regulatory Commission

1. The Nuclear Waste Policy Act defines a "repository" to include "both surface and subsurface" areas, but section 4(a) of S. 2589 would exclude any "surface facility" that is not "necessary for initial operation of the repository" from consideration as part of the license application. The Commission has said, both in Chairman Diaz's, June 30 letter and in Mr. Virgilio's statement, that this provision can be read to "place certain surface facilities outside the NRC's jurisdiction."

- Please identify the types of facilities that this provision may exclude from the Commission's jurisdiction.
- Would the provision enable the Department to exclude plans to construct spent fuel storage facilities from the license application on the grounds that interim storage facilities are not "necessary for initial operation of the repository"?
- How might this provision affect the Commission's statutory responsibility to protect the health and safety of the public?

2. Section 4(b) of S. 2589 authorizes DOE to "undertake infrastructure activities" at the repository without the NRC's prior approval.

•How does this provision compare with the NRC's "limited work authorization" rule for nuclear power plants? The limited work authorization rule requires an NRC licensing board to make a preliminary safety determination and environmental findings and the NRC regulatory staff to approve the activity before the applicant can begin work, does it not? Where are the similar protections in section 4(b)?

•Would section 4(b) enable the Department to construct spent fuel storage facilities at the repository before applying to the Commission for a license to receive and possess spent fuel at the site?

3. As I understand it, the NRC generally regulates transportation packaging and security, and the Department of Energy regulates shippers and routing.

- How does section 7 affect this division of authority?
- Does the Atomic Energy Act give the NRC the authority, and does it have the expertise, to regulate shipping routes?

4. Under current law, the NRC can license new nuclear power plants, even though a nuclear waste repository is still not available, on the basis of the Commission's "waste confidence" rule, which says that the Commission has a reasonable assurance that a repository will be available soon. Section 9 requires the Commission to "deem" that sufficient disposal capacity will be available "without further consideration."

- Does the Commission support section 9?
- The court decision that gave rise to the Commission's waste confidence rulemaking found "no implication that Congress intended that the NRC ignore new knowledge or analysis in its licensing decisions." Minnesota v. NRC, 602 F.2d 412, 419 (D.C. Cir. 1979). Section 9 would require the Commission to ignore new knowledge or analysis on the availability of waste disposal capacity in its reactor licensing decisions, would it not?
- How can the Commission discharge its statutory responsibility to ensure adequate protection of the health and safety of the public if it is forbidden to consider whether there is reasonable assurance that adequate waste disposal capacity will be available in the foreseeable future?