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Lawrence Kokajko, Director
Division of High Level Radioactive Waste Repository Safety
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

**RE: Safety Evaluation Report Related to Disposal of High-Level
Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada,
Volume 1: General Information (NUREG-1949, Vol. 1).**

Dear Mr. Kokajko:

I am writing to express my disappointment with the NRC Staff's Volume 1 of its Safety Evaluation Report on DOE's application for a construction authorization for the Yucca Mountain repository (SER Volume 1). It appears from SER Volume 1 that the Staff's review of the general information portion of the application (the subject of SER Volume 1) included little or no independent evaluation. SER Volume 1 closely resembles a completeness review, or possibly a trivial review merely to verify that DOE's summaries of detailed evaluations presented later in the application were accurate summaries. I do not understand how such an extremely limited review serves any legitimate public purpose.

Moreover, the Staff's repetitive finding that DOE complied with the Commission's regulations applicable to general information creates the misleading impression that the review was more substantive than it actually was. The NRC Staff must have known that favorable review findings such as this would be touted by Yucca proponents as evidence the Yucca Mountain Project should proceed over the Administration's objections. The Executive Summary of SER Volume 1 should have explained upfront, in clear, non-bureaucratic terms, that the Staff's review of general information was essentially non-substantive and that nothing in SER Volume 1 should be construed as implying that Yucca Mountain is a safe repository site. We hope that the

Staff's virtually unqualified acceptance of DOE's representations in its general information portion of the application will not be representative of the rest of the Staff's Safety Evaluation Report, should Staff's preparation of that Report continue.

SER Volume 1 includes two significant mistakes, notwithstanding its limited scope. The first mistake relates to a non-existent DOE commitment. In Section 1.1, General Description, Location and Arrangement of the GROA (Geologic Repository Operations Area), the Staff states (p. 1-3):

"Initially, the NRC staff identified that GI Figures 1-2 and 1-4 were inaccurate with regard to Federal ownership, the site boundary, and location of the controlled areas; however, the applicant has committed (DOE, 2009au) to update the license application to reflect the private ownership and the correct acreage of Patent 27-83-0002 in GI Figures 1-2 and 1-4 and revise the figures to show that the Patent 27-83-0002 area is private land excluded from the proposed land withdrawal area."

And then the Staff makes the following finding:

"On the basis of the applicant's commitment (DOE, 2009au) to revise GI Figures 1-2 and 1-4 to accurately reflect ownership of the land, site boundary, and the location of controlled areas, the NRC staff finds the applicant has provided accurate information showing the location of the site and general location of the GROA."

While this obvious error on DOE's part shows a blatant disregard for accuracy in the simplest details of its license application, the Staff's acceptance of a 2009 DOE commitment to repair the error in a future update of the license application ignores a subsequent DOE statement made public in March 2010 that DOE has no intent ever to update its Yucca Mountain license application. This announcement, extinguishing the validity of the Staff's finding, came months prior to the Staff's issuance of this SER volume, and should have been so noted and taken into account by the Staff in its review findings.

The second mistake relates to the Staff's review of DOE's descriptions of plans for physical security and material control and accounting. In Sections 1.3, Physical Protection Plan, and Section 1.4, Material Control and Accounting Program, the Staff finds that the material presented by DOE is complete and acceptable because it addresses the applicable elements of the Yucca Mountain Review Plan and regulations. But, in lieu of providing the detailed descriptions of the plans and programs called for in an application for a construction authorization, these findings rely on DOE's paraphrasing of the Review Plan and its commitments to provide the required plan documents "no later than 180 days *after* NRC issues a construction authorization" (emphasis added). DOE previously had announced this commitment without objection by the Staff, but in so doing all parties, including the NRC Staff, were unnecessarily deprived of the ability to review these two critical elements of the license application for construction

authorization. The Staff's findings in these two sections of the SER are unjustified, especially in view of the previous history of unfulfilled commitments by DOE to the NRC Staff. Moreover, SER Volume 1 would have been more candid and informative if it had acknowledged the Commission's previous finding that the regulations being applied by the Staff in its evaluation "are not adequate to protect the common defense and security or the public health and safety." See 72 Fed. Reg. 72,522, 72,524 (December 20, 2007).

The Staff's approach of limiting the scope of its review of general information in the application also has the unfortunate effect of leaving certain improbable and even ridiculous DOE representations unchallenged. For example, in Section 1.2, Proposed Schedules for Construction, Receipt, and Emplacement of Waste, the Staff accepts, without comment, DOE's statement that NRC will issue a construction authorization in 2011. It is common knowledge that under current circumstances it is impossible that a construction authorization would be issued in 2011, even if the application cannot be withdrawn. Not only have lengthy licensing board hearings not yet begun, but NRC Staff has published a schedule calling for its own SER Volume 5 to be issued in approximately February 2012. Completion of the full SER and a full and favorable initial decision in the contested licensing proceeding are prerequisites to issuance of a construction authorization.

In Section 1.1, General Description (p. 1-7), the NRC Staff provides the following finding regarding waste retrieval and alternative storage: "On the basis of the NRC staff's review of the information in GI Section 1.2.4, the NRC staff finds that the applicant provided a description of plans for the retrieval and the alternative storage of radioactive wastes, should retrieval be necessary." Section 1.2.4 of the General Information Volume of the license application for construction authorization begins a 4 paragraph discussion of this issue by stating that "this section is a summary of SAR (Safety Analysis Report) Section 1.11." However, the Staff finding is made without benefit of review of Section 1.11. The Staff wrote the following:

"The NRC staff confirms that the applicant's summary description included (i) how the GROA is designed to permit retrieval of any or all emplaced waste, starting at any time up to the beginning of permanent closure; (ii) reasons why retrieval operations could be initiated; and (iii) how, if a retrieval decision is made, waste would be placed in a storage or disposal facility designed in accordance with the regulations that are applicable at the time."

The limited scope of Staff's review allowed it to avoid commenting on certain representations in Section 1.11. Had there been a more in-depth review, Staff might have questioned why DOE believes it could take up to eight or more years to begin retrieval operations once a decision has been made to retrieve waste, as a consequence possibly of an emergency situation.

In Chapter 2 of the SER, Vol. 1 Staff finds that DOE's proposed schedules for construction, receipt of waste and emplacement are "sufficiently detailed" to allow NRC

staff evaluation. The entire repository design depends upon annual delivery of 90% of the commercial SNF in TAD canisters, a virtual impossibility given current utility storage practices and the annual acceptance schedule established by DOE for years 1-5, based on the standard contracts. Moreover, the GROA lacks rail access for delivery of TAD casks, and DOE does not have the STB CPCN needed to even begin what would be a decade or more of rail construction. The Staff's limited review approach allowed it to avoid any discussion of schedule uncertainty, possible contingency plans, and implications for NRC staff evaluation.

The public interest is not served by the issuance of government documents that are easily misconstrued as meaningful and substantive when they are not intended as such, and that sweep apparent deficiencies under the rug by claiming a limited scope of review. The Staff should have foregone the issuance of its SER Volume 1 altogether.

Sincerely,



Bruce Breslow
Executive Director

BHB/

cc Parties to and participants in the Yucca Mountain Licensing Proceeding
Nevada Congressional delegation
Nuclear Waste Technical Review Board
Catherine Cortez Masto, Nevada Attorney General
Nevada Commission on Nuclear Projects
Nevada State Legislature's High-Level Radioactive Waste Committee