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Maine Center for Disease  
Control and Prevention

An Office of the  
Department of Health and Human Services

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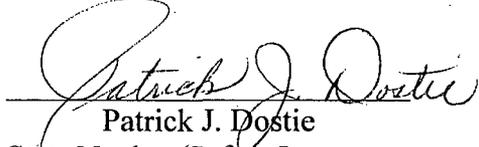
To: Honorable Ms. Elizabeth Mitchell, President of the Senate  
Honorable Ms. Hannah Pingree, Speaker of the House

Subject: State Nuclear Safety Inspector Office's July 2010 Monthly Report to the Maine Legislature

As part of the State's long standing oversight of Maine Yankee's nuclear activities, legislation was enacted in the second regular session of the 123<sup>rd</sup> and signed by Governor John Baldacci requiring that the State Nuclear Safety Inspector prepare a monthly report on the oversight activities performed at the Maine Yankee Independent Spent Fuel Storage Installation facility located in Wiscasset, Maine.

Enclosed please find the Inspector's July 2010 monthly activities report. This month's report highlights a few notable items. First is the recusal of the newly appointed Commissioner, Dr. George Apostolakis, from the Yucca Mountain license proceedings before the Nuclear Regulatory Commission (NRC). Second is the proposed NRC Waste Confidence Rule issued by Chairman Gregory Jaczko allowing for the storage of spent nuclear fuel on-site for 100 years while directing the NRC staff to prepare an update to the Rule for the storage of the used fuel up to 300 years. Third, there is the testimony of Michael Hertz, Deputy Assistant Attorney General, to the U.S. House of Representatives Committee on the Budget on the Department of Justice's perspective of the budget implications of closing down Yucca Mountain. Fourth, there is the testimony of South Carolina Public Service Commissioner, David Wright, before the House of Representatives Committee on the Budget on the current and future impacts to ratepayers and taxpayers on closing Yucca Mountain. Finally, there are two special audit reports from the Department of Energy's (DOE) Inspector General raising concerns on the pace of the DOE's shutdown of Yucca Mountain requiring enhanced surveillance and the extent of unresolved and questioned costs totaling nearly \$180 million.

Please note that this year's reports will not feature the glossary and the historical addendum. However, both the glossary and the addendum are available on the Radiation Control Program's website at <http://www.maineradiationcontrol.org> under the nuclear safety link. Should you have questions about its content, please feel free to contact me at 207-287-6721, or e-mail me at [pat.dostie@maine.gov](mailto:pat.dostie@maine.gov).

  
Patrick J. Dostie  
State Nuclear Safety Inspector

NMSS24

Enclosure

cc: Ms. Vonna Ordaz, U.S. Nuclear Regulatory Commission  
Ms. Nancy McNamara, U.S. Nuclear Regulatory Commission, Region I  
Mr. James Connell, Site Vice President, Maine Yankee  
Ms. Brenda Harvey, Commissioner, Department of Health and Human Services  
Mr. Geoff Green, Deputy Commissioner, Department of Health and Human Services  
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Ms. Nancy Beardsley, Director, Division of Environmental Health  
Mr. Jay Hyland, PE, Manager, Radiation Control Program

# State Nuclear Safety Inspector Office

## July 2010 Monthly Report to the Legislature

### Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 123<sup>rd</sup> Legislature, the foregoing is the monthly report from the State Nuclear Safety Inspector.

The State Inspector's individual activities for the past month are highlighted under certain broad categories, as illustrated below. Since some activities are periodic and on-going, there may be some months when very little will be reported under that category. It is recommended for reviewers to examine previous reports to ensure connectivity with the information presented as it would be cumbersome to continuously repeat prior information in every report. Past reports are available from the Radiation Control Program's web site at the following link: [www.maineradiationcontrol.org](http://www.maineradiationcontrol.org) and by clicking on the nuclear safety link in the left hand margin.

Commencing with the January 2010 report the glossary and the historical perspective addendum will no longer be included in the report. Instead, this information will be available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and will redirect the reviewer to the website.

### Independent Spent Fuel Storage Installation (ISFSI)

During July the general status of the ISFSI was normal. There were three instances of spurious alarms due to environmental conditions. All alarms were investigated and no further actions were warranted.

There were no fire-related impairments in July. However, there was one security-related impairment in July that was security sensitive and therefore, not available for public disclosure.

There were twenty-one security events logged. Twenty of the 21 SEL's logged, were associated with transient issues due to temporary environmental conditions. One SEL was for an ADT communication line issue.

There were six condition reports<sup>1</sup> (CRs) for the month of July. The first CR was written on July 1<sup>st</sup>. It addressed two Radiation Work Permits (RWP) issued with the same number. One of the RWPs was immediately closed. Two CRs were written on July 12<sup>th</sup>. The first involved a work package on a fire barrier that lacked all the proper reviews. The second was over some missing items from an Emergency Kit. The discovery was made during a scheduled quarterly inventory and the missing items were restored in the Kit. The fourth CR was written on July 15<sup>th</sup> on the potential improper control of safeguards documents issued by the Nuclear Regulatory Commission to the State of Maine. An investigation later indicated that the documents were appropriately controlled. The fifth CR was written on July 22<sup>nd</sup> for an equipment issue. The vendor replaced a circuit card and failed to reconnect some of the electronic connections back to their proper configuration. The sixth CR addressed a missing signature on routine log reviews.

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<sup>1</sup> A condition report is a report that promptly alerts management to potential conditions that may be adverse to quality or safety. For more information, refer to the glossary on the Radiation Program's website.

## *Other ISFSI Related Activities*

On July 14<sup>th</sup> the Nuclear Regulatory Commission (NRC) granted Maine Yankee's request for an exemption from their regulations on one of the 60 casks at the ISFSI not meeting amendment no. 5 to the Certificates of Compliance (CoC) for Maine Yankee's casks. According to amendment no. 5 to the CoC, the lone cask did not meet the 600 hours limit for a filled canister to remain in a transfer cask. Initially, weather conditions and Technical Specifications on temperature limitations at the time prevented the transfer of the cask to the ISFSI pads. However, the cask did meet the original requirements of amendment no. 2 of the CoC of unlimited time when it was moved to the ISFSI pad in February of 2003. After evaluating the public health and safety, and environmental impacts the NRC concluded that the lone cask would not pose an increased risk to public health and safety, and granted the exemption, effective immediately.

On July 14<sup>th</sup> a truck became stuck when it tried turning around at the old East Access Road entrance. The local law enforcement agencies were notified and responded, and helped the truck driver back on his way. Since the truck was not on Maine Yankee property, there was no need to contact the Nuclear Regulatory Commission's Operations Center.

On July 28<sup>th</sup> Maine Yankee responded to the Nuclear Regulatory Commission's (NRC) oral request for additional information on a proposed amendment to Maine Yankee's ISFSI Physical Security Plan. The information provided was both safeguards and security sensitive and therefore, not available for public disclosure. In addition, Maine Yankee also requested an exemption from NRC's regulations requiring their central alarm station being within the protected area. Maine Yankee previously submitted information on this exemption request on December 22, 2009, and March 25, 2010.

## Environmental

On July 20<sup>th</sup> the State received the results from the second quarter thermoluminescent dosimeters<sup>2</sup> (TLDs) field replacement of the ISFSI and Bailey Cove. The results from the quarterly change out continued to illustrate, but not as pronounced as it was during the previous quarters, the three distinct exposure groups: elevated, slightly elevated and normal. The two consistently high stations, G and K, averaged 27.2 milliRoentgens<sup>3</sup> (mR) due to their proximity to the storage casks. The moderately high group stations E, F, J, and L, averaged 24.3 mR. However, this past quarter stations E and F results were more comparable to each other with an average of 24.9 mR than the other two stations, J and L, which averaged 23.6. The remaining stations, A, B, C, D, H, I, and M, averaged 22.5 mR with station M more comparable to stations J and L with an average of 23.3. The control TLDs that are stored at the State's Radiation Control Program in Augusta averaged about 25 mR. In comparison the normal expected quarterly background radiation levels on the coast of Maine would range from 13 to 25 mR.

The Bailey Cove TLDs averaged 22.4 mR and ranged from 20 to 28 mR, which is comparable to the normally expected background radiation levels. As observed with the ISFSI TLDs, the Bailey Cove TLDs also had some higher values with the lower values due to their proximity to the water's edge.

For statistical purposes each area radiation monitoring location has two TLDs. Each TLD has three elements to gauge the ambient environmental radiation level. Of the 13 TLD locations near the ISFSI, one of the 78 TLD elements had an unusually high response, 38.2, compared to the range of 20 to 30 normally seen, and was rejected. When these abnormal fluctuations occasionally occur, their data points are statistically tested by the

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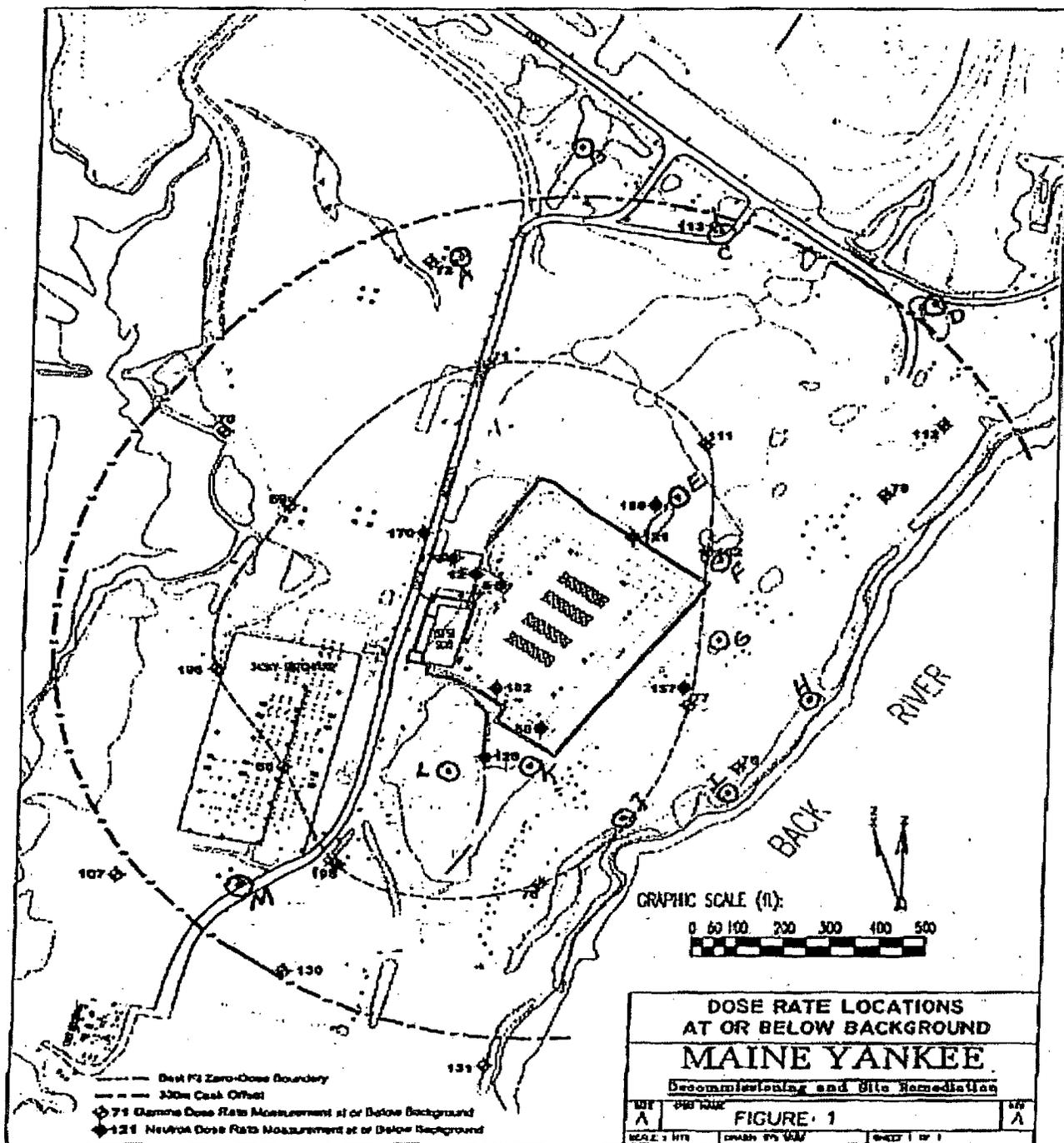
<sup>2</sup> Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis.

<sup>3</sup> A milliRoentgen (mR) is a measurement of radiation. For a further explanation, refer to the glossary on the Radiation Program's website.

TLD processing company against the remaining two elements in the same TLD to see if the data point is an outlier. If it is, the data point is rejected and not reported in the TLD summary report from the vendor. The other two elements in the same TLD as the outlier both read 22.

For informational purposes Figure 1 illustrates the locations of the State's 13 TLD locations in the vicinity of the ISFSI. The State's locations are identified by letters with the two highest locations being stations G and K.

Figure 1



On July 21<sup>st</sup> the State received the Health and Environmental Testing Laboratory's (HETL) results from the June 30<sup>th</sup> quarterly Radiological Environmental Monitoring Program of freshwater, saltwater, and seaweed. The State's HETL employs various analytical methods to measure certain radioactive elements. All the positive results indicated in Table 1 highlight naturally occurring background levels and ranges. There are seasonal variations, but these would be difficult to point out with only two data points for the calendar year.

Besides the bi-weekly gross beta<sup>4</sup> analysis, a quarterly composite of the air filters is evaluated for the gamma energy fingerprints of most radioactive elements. The gross beta values reported are comparable to the historical values seen previously at Maine Yankee and at the control station on HETL's roof.

Tritium (Hydrogen-3 or H-3) and Beryllium-7 (Be-7) are both naturally occurring "cosmogenic" radioactive elements, which mean they are continuously being produced by cosmic-ray interactions in the atmosphere. Be-7 is produced from the high-energy cosmic rays bombarding the oxygen, carbon and nitrogen molecules in the atmosphere. Besides being naturally produced, Tritium is also a man-made element as it is a by product of the fission and neutron activation processes in nuclear power plants.

Table 1 – REMP Media Results

Media Type	Positive Results	Quarterly Sampling Period	
		1 <sup>st</sup> Quarter 2010	2 <sup>nd</sup> Quarter 2010
<u>Freshwater</u>	Gross Beta	0.91 pCi/L <sup>(5)</sup>	2.21 pCi/L
	Tritium (Hydrogen-3 or H-3)	140 pCi/L	147 pCi/L
<u>Seawater</u>	Tritium (H-3)	134 pCi/L	154 pCi/L
	Potassium-40 (K-40)	117 pCi/kg <sup>(6)</sup>	245 pCi/L
<u>Seaweed</u>	Beryllium-7 (Be-7)	355 pCi/kg	293 pCi/kg
	Potassium-40 (K-40)	3,210 pCi/kg	5,150 pCi/kg
Air Filters (Control)	Gross Beta (range)	10.5 – 27.8 fCi/m <sup>3</sup> <sup>(7)</sup>	15.6 – 21.4 fCi/m <sup>3</sup>
	Quarterly Composite (Be-7)	76.6 fCi/m <sup>3</sup>	85.0 fCi/m <sup>3</sup>

<sup>4</sup> Gross Beta is a screening technique that measures the total number of beta particles (negative electrons) emanating from a potentially radioactive sample.

<sup>5</sup> pCi/L is an acronym for a pico-curie per liter, a concentration unit that describes how much radioactivity is present in a particular volume, such as a liter. A "pico" is a scientific prefix for an exponential term that is equivalent to one trillionth (1/1,000,000,000,000).

<sup>6</sup> pCi/kg is also an acronym for a pico-curie per kilogram, a concentration unit that describes how much radioactivity is present in a particular mass, such as a kilogram

<sup>7</sup> fCi/m<sup>3</sup> is another acronym for a femto-curie per cubic meter. Again it describes a concentration of how much radioactivity is present in a particular volume of air, such as a cubic meter. A "femto" is a scientific prefix that is equivalent to one quadrillionth (1/1,000,000,000,000,000).

Since Potassium-40 (K-40) has such a long half life, approximately 1.3 billion years, it is a "primordial" radioactive element, which means it has survived in detectable quantities in the earth's crust since the formation of the earth. Generally speaking K-40 is not normally found in freshwater, but it is readily detected in saltwater due to minerals being washed into streams and rivers and ultimately emptying into the ocean.

As explained in last month's report the State stopped sampling for freshwater, seawater and seaweed on June 30<sup>th</sup> as there was no technical justification to warrant further testing. The second quarter results will be the last sampling results of this environmental media as the State ceased the sampling in June after 40 years.

### Maine Yankee Decommissioning

There was nothing new to report this month in this category.

### Groundwater Monitoring Program

On July 1<sup>st</sup> the State Inspector started reviewing Maine Yankee's response to the State's comments on their Fourth Annual Groundwater Report.

The results for the State's radiological quality assurance testing for some of the groundwater wells at the Maine Yankee site performed in June will be reported in next month's monthly report. This testing is the last radiological testing to be performed at the site under the five year agreement between the State and Maine Yankee.

### Other Newsworthy Items

1. On July 1<sup>st</sup> the Nuclear Waste Strategy Coalition issued a press release, entitled "Law over Politics". The news release praised the recent decision of the Atomic Safety and Licensing Board to deny the Department of Energy's motion to withdraw its license application on Yucca Mountain, Nevada. A copy of the news release is attached.
2. On July 2<sup>nd</sup> the Department of Energy (DOE) notified all of its employees of the Office of Civilian Radioactive Waste Management working on the Yucca Mountain Project of a July 7<sup>th</sup> meeting in Las Vegas and Washington, D.C. to provide them with their specific "Reduction in Force Notice of Separation". All employees were encouraged to attend the simultaneous meetings as it would afford them the opportunity to exercise their Interagency Career Transition Assistance Plan eligibility when applying for federal employment outside the DOE. An example of one notice of separation is attached.
3. On July 2<sup>nd</sup> the Nuclear Regulatory Commission (NRC) and the Department of Justice filed a joint motion with the U.S. Circuit Court of Appeals for the District of Columbia to vacate the briefing and oral argument schedule and hold in abeyance the cases brought forward from Aiken County, South Carolina, the States of Washington and South Carolina, the three business leaders from the Tri-County area near Hanford, Washington, and the National Association of Utility Regulators until a final decision is rendered by the Nuclear Regulatory Commission on the merits of the same petitions before the NRC on the withdrawal of the Department of Energy's license application for Yucca Mountain.
4. On July 5<sup>th</sup> the Co-Chairs of the Transportation and Storage Committee of the Blue Ribbon Commission on America's Nuclear Future sent a letter to Chairperson Marge Kilkelly of the Maine

Yankee Community Advisory Panel (CAP) accepting the CAP's invitation to visit the site and meet with the CAP. The Co-Chairs suggested an August 10<sup>th</sup> date for their meeting. A copy of their letter is attached.

5. On July 6<sup>th</sup> 91 members of Congress signed and sent a letter to Secretary Energy Chu requesting an immediate cessation of all actions to dismantle the Yucca Mountain Project until such time legal action is resolved by the Nuclear Regulatory Commission and the U.S. Circuit Court of Appeals for the District of Columbia. Twenty-four Senators, including Senators Snowe and Collins, and 67 Representatives signed the petition. In all representatives of 35 states signed the letter. A copy of the letter is attached.
6. On July 6<sup>th</sup> Maine Yankee issued a news release announcing that the Transportation and Storage Subcommittee of the Blue Ribbon Commission had accepted Maine Yankee's Community Advisory Panel's invitation for a meeting scheduled for August 10<sup>th</sup> with details to follow. A copy of the news release is attached.
7. On July 6<sup>th</sup> the Nuclear Decommissioning Authority of the United Kingdom (UK) outlined plans for disposing of the UK's civilian and defense related nuclear wastes in a deep underground repository and stated that a site could be under preparation within five years provided the agency was spared the drastic cuts plaguing the rest of the public sector. One county, West Cumbria near the Sellafield nuclear plant in northwest England, has expressed interest in hosting the repository.
8. On July 7<sup>th</sup> the Disposal Subcommittee of the Blue Ribbon Commission on America's Future held a meeting in Washington, D.C. The morning session included presentations from governmental organizations delineating their experiences, especially from Nevada and New Mexico. New Mexico State Representative John Heaton stated he believed that certain forms of the nation's defense high level waste could be suitable for disposal at the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico, since some was already processed awaiting vitrification and its heat load was low allowing for more certainty in salt performance. Representative Heaton also mentioned that after 90 years the heat load of commercial spent fuel would meet the acceptance criteria for the WIPP facility. A copy of the agenda is attached.
9. On July 7<sup>th</sup> the States of South Carolina and Washington, Aiken County, South Carolina, and Robert Ferguson of the Tri-City business leaders near Hanford, Washington filed a response with the U.S. Circuit Court of Appeals for the District of Columbia opposing the Nuclear Regulatory Commission and the Department of Justice's July 2<sup>nd</sup> motion to vacate briefing and oral argument schedule and hold their cases in abeyance.
10. On July 7<sup>th</sup> Energy Secretary Chu sent a letter to Representative Ralph Hall, the Ranking Member on the House's Committee on Science and Technology, responding to Representative Hall's February 3<sup>rd</sup> letter seeking further explanation on the bases for the Administration's decision to terminate the Yucca Mountain Project. Although Dr. Chu did not specifically address Representative Hall's concerns, he did provide an April 12<sup>th</sup> letter from the DOE's General Counsel on the Department's legal basis for discontinuing the Office of Civilian Waste Management and reprogramming its funds. Copies of both letters are attached.
11. On July 8<sup>th</sup> Aiken County, South Carolina, filed a motion with the Nuclear Regulatory Commission opposing the Commission's review of the Atomic Safety and Licensing Board Order denying the Department of Energy's motion to withdraw its license application to construct a geologic repository at Yuccas Mountain in Nevada. Aiken County further stipulates that if the Commission does review the Order, it should uphold the Order.

12. On July 9<sup>th</sup> the State of Nevada filed a brief with the Nuclear Regulatory Commission supporting the review and reversal of the Atomic Safety and Licensing Board's decision denying the Department of Energy's motion to withdraw its license application with prejudice on Yucca Mountain.
13. On July 9<sup>th</sup> the Nuclear Regulatory Commission staff responded to the Secretary of the Commission's June 30<sup>th</sup> Order requesting briefs as to whether the Commission should review and reverse or uphold the Atomic Safety and Licensing Board Order denying the Department of Energy's motion to withdraw its license application. The NRC staff position is for the Commission to review and reverse the Board's Order.
14. On July 9<sup>th</sup> the National Association of Regulatory Utility Commissioners filed a brief with the Nuclear Regulatory Commission supporting the June 29<sup>th</sup> decision by the Atomic Safety and Licensing Board's denying the Department of Energy's motion to withdraw its license application on Yucca Mountain. Should the Commission review the Board's decision, then NARUC requested that the Board Order be upheld.
15. On July 9<sup>th</sup> the County of Inyo, California filed a response with the Nuclear Regulatory Commission on the Atomic Safety and Licensing Board's Order to deny the Department of Energy's (DOE) motion to withdraw its license application. The County did not take any position on whether the Commission should review and reverse or uphold the Board Order. However, the County did urge the Commission, should it review and reverse the Board's decision and grant's DOE's motion to withdraw its license application, make three findings and two conditions pertinent to Inyo's case of ten admitted contentions in the licensing process.
16. On July 9<sup>th</sup> the Prairie Island Indian Community filed its brief with the Nuclear Regulatory Commission requesting that it affirms the Atomic Safety and Licensing Board's Order to deny the Department of Energy's motion to withdraw its license application for a nuclear waste repository at Yucca Mountain.
17. On July 9<sup>th</sup> the State of South Carolina filed a brief with the Nuclear Regulatory Commission requesting that the Commission refuse the review of the Atomic Safety and Licensing Board's Order to deny the Department of Energy's motion to withdraw its license application on Yucca Mountain. If the Commission does choose to review the Board's Order, the State requested the Commission to uphold the Board's ruling. In addition, as part of its brief the State also filed a motion for Commissioners Apostolakis, Ostendorf and Magwood to recuse themselves from the Yucca Mountain proceedings.
18. On July 9<sup>th</sup> the States of Washington and South Carolina, Aiken County, South Carolina, and White Pine County, Nevada filed a joint motion requesting the recusal of Commissioners Magwood, Apostolakis, and Ostendorf for their responses during a February 9<sup>th</sup> confirmation hearing before the Senate's Committee on Environment and Public Works. Each Commission nominee at the time stated that they would not second guess the Department of Energy's decision to withdraw its license application for Yucca Mountain from the Commission's review.
19. On July 9<sup>th</sup> the Four Nevada Counties of Churchill, Esmeralda, Lander, and Mineral submitted their joint brief to the Nuclear Regulatory Commission agreeing with the Atomic Safety and Licensing Board's Order denying the Department of Energy's motion to withdraw its license application for Yucca Mountain. The four counties requested the Commission not to review the Board's decision and, if the Commission does choose to review it, to uphold the Board's ruling.

20. On July 9<sup>th</sup> Nye County, Nevada filed its brief with the Nuclear Regulatory Commission supporting the Atomic Safety and Licensing Board's decision denying the Department of Energy's motion to withdraw with prejudice its license application for the Yucca Mountain repository. Nye County requested that the Commission refuse to review the Board's Order, or if it does review it to uphold it. The brief also requested that the States of Washington and South Carolina, Aiken County, South Carolina, and the Prairie Island Indian Community be granted intervention status in the proceedings.
21. On July 9<sup>th</sup> the State of California filed a brief with the Nuclear Regulatory Commission (NRC) noting that it supported the Department of Energy's motion to withdraw its license application. California urged the Commission should it review and overturn the Atomic Safety and Licensing Board's denial of the Department of Energy's (DOE) motion to withdraw its license application to do so only with conditions that do not foreclose California's 22 admitted contentions regarding DOE's or NRC's compliance with the National Environmental Policy Act to be litigated by California in any future licensing proceeding.
22. On July 9<sup>th</sup> the Department of Energy (DOE) filed its brief with the Nuclear Regulatory Commission in support of the Commission's review and reversal of the Atomic Safety and Licensing Board's ruling denying the DOE's motion to withdraw its license application. The DOE also requested that the Commission impose no other conditions on them.
23. On July 9<sup>th</sup> the Nuclear Energy Institute (NEI) filed a brief with the Nuclear Regulatory Commission stating their opposition to the Commission's review of the Atomic Safety and Licensing Board's Order denying the Department of Energy's motion to withdraw its license application. Should the Commission decide to review the Order NEI requested that the Commission uphold the Order.
24. On July 9<sup>th</sup> the State of Washington filed a brief with the Nuclear Regulatory Commission in opposition to the Commission reviewing the Atomic Safety and Licensing Board Order denying the Department of Energy's motion to withdraw its license application for the Yucca Mountain repository. If the Commission does review the Order, the State of Washington argued that the Commission should uphold the Order in its entirety.
25. On July 12<sup>th</sup> the Reactor and Fuel Cycle Technologies Subcommittee of the Blue Ribbon Commission on America's Nuclear Future held a meeting in Idaho Falls, Idaho. The meeting focused on several areas of research and development, such as reactors, fuel cycle and fuels, separation and waste forms, and transmutation, ( a process by which radioactive elements with very long half-lives such as hundreds, thousands or million years are transformed into radioactive elements with shorter half lives of tens of years or less). A copy of the agenda is attached.
26. On July 12<sup>th</sup> the Nuclear Regulatory Commission and the Department of Justice filed a reply with the U.S. Circuit Court of Appeals over petitioner's opposition to the motion to vacate briefing and oral argument schedule and hold cases in abeyance pending a final Commission decision on the Atomic Safety and Licensing Board's Order to deny the Department of Energy's motion to withdraw its license application with the Commission.
27. On July 13<sup>th</sup> it was reported that Sweden is leading the way in burying its nuclear waste. At the end of the this year SKB, a company set up by Swedish electric utilities to manage nuclear waste, will file a formal application to construct an underground storage facility with a design life of 100,000 years in southeast Sweden that is expected to receive nuclear wastes by 2025. Compared with other countries, Sweden is building their repository in crystalline rock that is constantly dripping water. Since Sweden does not have rock formations that stop water from circulating, they adapted their approach by basing it on local conditions. They plan to encapsulate their fuel rods in copper-coated

cast-iron canisters where each canister will be set into a cavity that is plugged with bentonite, a rock that swells in a moist environment and stops water from circulating.

28. On July 14<sup>th</sup> the Secretary of the Nuclear Regulatory Commission noted that there were problems with the NRC's Electronic Information Exchange that delayed notifications to filers of briefs and issued an order extending until July 19<sup>th</sup> when response briefs would need to be submitted.
29. On July 14<sup>th</sup>-15<sup>th</sup> the Blue Ribbon Commission on America's Nuclear Future held a meeting in Kennewick, Washington near the Hanford nuclear reservation. The Commission toured numerous places on the Hanford site and received presentations from four different tribal communities, the States of Oregon and Washington, local communities, and Washington's Congressional delegation. A copy of the agenda is attached.<sup>3</sup>
30. On July 15<sup>th</sup> Nuclear Regulatory Commissioner Apostolakis recused himself from participating in the Department of Energy's license application proceedings with the Nuclear Regulatory Commission due to his past chairing of an independent panel that reviewed the "adequacy of the long-term performance assessment for the proposed Yucca Mountain repository." A copy of the recusal is attached.
31. On July 15<sup>th</sup> fourteen members of Congress signed and forwarded a letter to the Chairman of the Nuclear Regulatory Commission (NRC), Dr. Gregory Jaczko, urging the NRC to follow their Atomic Safety and Licensing Board ruling denying the Department of Energy's motion to withdraw its license application for Yucca Mountain. A copy of the letter is attached.
32. On July 15<sup>th</sup> the House Subcommittee on Energy rejected an amendment from Representative Rodney Frelinghuysen from New Jersey that would have redirected \$100 million from the Department of Energy's energy efficiency and renewable energy program to the Nuclear Regulatory Commission to continue its consideration of the Yucca Mountain repository's license application.
33. On July 19<sup>th</sup> the Nuclear Energy Institute (NEI) responded to the motion filed by the States of Washington and South Carolina, Aiken County, South Carolina and White Pine County, Nevada requesting that Commissioners Apostokalis, Magwood, and Ostendorf recuse themselves and be disqualified from the Nuclear Regulatory Commission's (NRC) review of the Atomic Safety and Licensing Board's (ASLB) decision to refuse the Department of Energy's motion to withdraw its license application for Yucca Mountain. The rationale for the request is based on the February 9<sup>th</sup> Senate confirmation hearing for all three then Commissioner nominees that they may have prejudged the merits when they responded to Chairman Senator Boxer's question: "If confirmed, would you second guess the Department of Energy's decision to withdraw the license application for Yucca Mountain from NRC's review?" All three nominees responded "no" without any further discussion or clarification of what the question might mean. Until the NRC decides to review the ASLB decision and in what context, the NEI position is that the motion is premature.
34. On July 19<sup>th</sup> the Department of Energy (DOE) filed a reply brief with the U.S. Nuclear Regulatory Commission in support of review and reversal of the Atomic Safety and Licensing Board's ruling to refuse the DOE's request to withdraw its license application for Yucca Mountain.
35. On July 19<sup>th</sup> the Department of Energy (DOE) filed a response with the Nuclear Regulatory Commission on the disqualification of Commissioners Magwood and Ostendorf on any issue associated with the appeal of the DOE motion to withdraw its license application. The DOE requested that the motion for recusal be denied as there was no basis in law for the motion.

36. On July 19<sup>th</sup> the Nuclear Regulatory Commission (NRC) staff responded to the Commission's June 30<sup>th</sup> order on whether the Commission should review, and reverse or uphold, the Atomic Safety and Licensing Board's (ASLB) order denying the Department of Energy's motion to withdraw its license application to construct a high-level geologic waste repository at Yucca Mountain in Nevada. The NRC staff's position is that the Commission should review and reverse in part the ASLB's ruling.
37. On July 19<sup>th</sup> the Nuclear Regulatory Commission staff also responded in opposition to the States of Washington and South Carolina, Aiken County, South Carolina, and White Pine County, Nevada July 9<sup>th</sup> joint motion seeking the recusal of Commissioners Apostolakis, Magwood, and Ostendorf from the Atomic Safety and Licensing Board's denial of the Department of Energy's motion to withdraw its license application for a high-level waste repository at Yucca Mountain.
38. On July 19<sup>th</sup> the National Association of Regulatory Utility Commissioners (NARUC) filed a reply brief to the Nuclear Regulatory Commission (NRC) on the briefs filed by the State of Nevada, the Department of Energy, and NRC staff supporting the Commission's review. NARUC'S position is that the Commission declines the review of the Atomic Safety and Licensing Board's June 29<sup>th</sup> denial. However, if the Commission chooses to review the Board's denial order, NARUC requests that the Commission upholds the Board's Order in all aspects.
39. On July 19<sup>th</sup> the State of Nevada, the Joint Timbisha Shoshone Tribal Group, the Native Community Action Council, and Clark County, Nevada filed a joint response brief to the Nuclear Regulatory Commission supporting the Commission's review and reversal of the Licensing Board's decision to deny the Department of Energy's motion to withdraw its license application with prejudice. The brief was in response to briefs from other parties opposing the Commission's review and reversal of the Board's June 29<sup>th</sup> Order.
40. On July 19<sup>th</sup> Nye County, Nevada filed its response brief to the Nuclear Regulatory Commission (NRC) supporting the Atomic Safety and Licensing Board's Order denying the Department of Energy's motion to withdraw with prejudice its license application for the Yucca Mountain repository. The brief was in response to other briefs filed by the Department of Energy, the State of Nevada, and the NRC staff. The Nye County brief requested that the Commission either refuse to review the Board's Order, or review and affirm the Board's Order.
41. On July 19<sup>th</sup> the State of Nevada filed a response with the Nuclear Regulatory Commission in opposition to the motion that Commissioners Magwood and Ostendorf recuse themselves from reviewing the Atomic Safety and Licensing Board Order denying the Department of Energy's motion to withdraw its license application.
42. On July 19<sup>th</sup> the State of Washington filed a brief with the Nuclear Regulatory Commission (NRC) in response to briefs filed by the Department of Energy (DOE), the State of Nevada and the NRC staff requesting review and reversal of the June 29<sup>th</sup> Atomic Safety and Licensing Board ruling to deny the DOE's motion to withdraw its license application. The State of Washington maintained its position that the Commission should not review the Board's Order.
43. On July 19<sup>th</sup> the State of South Carolina filed a brief with the Nuclear Regulatory Commission (NRC) in response to briefs filed by the Department of Energy (DOE), the State of Nevada and the NRC staff requesting review and reversal of the June 29<sup>th</sup> Atomic Safety and Licensing Board ruling to deny the DOE's motion to withdraw its license application. The State of South Carolina maintains that the Board's Order be affirmed in its entirety.

44. On July 19<sup>th</sup> the Nuclear Energy Institute filed a brief with the Nuclear Regulatory Commission (NRC) responding to other briefs and maintaining that the Commission should uphold the Board's Order to deny the Department of Energy's motion to withdraw its license application.
45. On July 19<sup>th</sup> the Prairie Island Indian Community (PIIC) filed a response brief with the Nuclear Regulatory Commission (NRC) addressing separately the initial replies of the Department of Energy (DOE), the State of Nevada (and allied parties), and the NRC staff. The PIIC requested that the Commission affirm the June 29<sup>th</sup> Atomic Safety and Licensing Board memorandum and order denying the DOE's motion to withdraw its license application.
46. On July 19<sup>th</sup> Aiken County, South Carolina, file a reply brief with the Nuclear Regulatory Commission (NRC) outlining and reaffirming its arguments as to why the Commission must allow the Licensing Board Order denying the Department of Energy's motion to withdraw to stand.
47. On July 20<sup>th</sup> three prominent Republican members of the House Science and Technology Committee sent a letter to Secretary Energy Chu expressing their concerns over the lack of scientific or technical justification regarding the Department of Energy's decision to cease operations at the Yucca Mountain facility. A copy of their letter is attached without the attachments noted in their letter.
48. On July 21<sup>st</sup> the State participated in a Nuclear Waste Strategy conference call and received briefs and updates on the Department of Energy's withdrawal of its Yucca Mountain license application, the Blue Ribbon Commission and its Subcommittee hearings, and congressional activities. The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 47 stakeholders in 31 states, committed to reforming and adequately funding the U.S. civilian high-level nuclear waste transportation, storage, and disposal program.
49. On July 22<sup>nd</sup> Senator Patty Murray from Washington introduced an amendment to restore \$200 million to continue the licensing of the Yucca Mountain repository. On the very same day the Senate Appropriations Committee voted 16 to 13 not to approve the amendment.
50. On July 22<sup>nd</sup> the Chair of the Nuclear Regulatory Commission (NRC) issued the "Final Update of the Commission's Waste Confidence Decision" that provides a 100 year plan for on-site storage of spent nuclear fuel and directing the NRC staff to assess the possibility of "indefinite storage of spent nuclear fuel". Chairman Jaczko proposed that the staff "prepare an update to the Waste Confidence Findings and Proposed Rule to account for storage at onsite storage facilities, offsite storage facilities, or both, for more than 100years, but no longer than 300 years, from the end of licensed operations of any nuclear power plant, which may include the term of a revised or renewed license." A copy Chairman Jaczko's comments are attached.
51. On July 26<sup>th</sup> Judge David Ebel of the Tenth Circuit Court of Appeals ruled that a pair of decisions made by the Interior Department were arbitrary and capricious and directed the Department of Interior (DOI) to reconsider two key interests from the Utah Skull Valley Band of Goshute Indians and the electric utility consortium Private Fuel Storage LLC. The first interest was for a right-of-way for a rail to truck transfer center and the second was the approval of a lease by the Bureau of Indian Affairs that already had been tentatively approved years earlier but denied in 2006 by DOI. Both approvals were necessary for the spent fuel storage site, which was licensed by the Nuclear Regulatory Commission in 2006 to store up to 44,000 tons of spent fuel in dry casks, or nearly 63% of the legal storage capacity at Yucca Mountain.
52. On July 27<sup>th</sup> Michael Hertz, Deputy Assistant Attorney General of the Justice Department, testified before the House Committee on the Budget. His testimony dealt with the budget implications of

closing Yucca Mountain. According to Hertz's testimony the litigation has been expensive for the government. The Justice Department has spent thus far \$29 million in attorney costs, \$111 million on experts and \$52 million in litigation support costs, with no end in sight as eight trials are expected in 2011. A total of 72 lawsuits have been filed, 22 of which reached judgment, and 11 have settled. The government's liability so far is \$2 billion. Mr. Hertz also added that Department of Justice officials are exploring an administrative claims process which would be more efficient and less expensive than litigation with about the same results. A copy of his testimony is attached.

53. On July 27<sup>th</sup> South Carolina Public Service Commissioner David Wright testified before the House Committee on the Budget expressing his concerns over the multiplicity of times ratepayers and taxpayers are being forced to pay for the federal government's failure to build a permanent repository at Yucca Mountain. First, as mandated by the Nuclear Waste Policy Act (NWPA), ratepayers pay through their electricity rates from utilities that use nuclear power. Second, since the Department of Energy did not take possession of the nation's spent fuel in 1998 as mandated by the NWPA, ratepayers have been compelled to pay for dry cask storage facilities. Third, as the Office of Homeland Security increases security requirements the security costs for dry cask storage also increase at ratepayers' expense. Fourth, since the federal courts have deemed the federal government in breach of the spent fuel contracts and therefore, liable for added storage costs, not only ratepayers but all taxpayers have to pay for the judgments and settlements. Finally, with the termination of the Yucca Mountain Project ratepayers and all taxpayers will eventually be compelled to pay for the significant financial penalties incurred by the federal government's breach of Agreements with the States of South Carolina, Idaho, and Washington for failure to take possession for the defense related wastes housed within their borders. A copy of his testimony is attached.
54. On July 28<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) sent a letter to the co-chairs of the Blue Ribbon Commission's Transportation and Storage Subcommittee expressing their support for the Subcommittee's choice for their first meeting on August 10<sup>th</sup> to be held within the environs of the Maine Yankee ISFSI in Wiscasset. A copy of the letter is attached.
55. On July 28<sup>th</sup> the Nuclear Waste Strategy Coalition issued a press release on the Department of Energy's (DOE) Inspector General July 21<sup>st</sup> report highlighting the DOE's "failure to conduct an orderly project shutdown of the Yucca Mountain Project." Some \$2 million in equipment, desks, cubicles, printers and supplies were removed from 900 offices in Las Vegas and the Yucca site and transferred to the Hanford reservation in Washington. Other equipment was also transferred to the Nevada Test Site, the Waste Isolation Pilot Project in Carlsbad, New Mexico and the Tonopah Test Range. Surplus emergency vehicles were sent to Nye County. While computers were being erased and redistributed to other Department of Energy programs, some of the computers were being donated to schools in Clark, Nye, and Lincoln Counties in Nevada. The most troublesome aspect is the Inspector General Office's decision not to pursue their audit findings to safeguard the national interests, including the interest of the ratepayers and taxpayers who funded the Project. Copies of the press release and the Report are attached.
56. On July 28<sup>th</sup> the U.S. Circuit Court of Appeals for the District of Columbia said it would wait until the Nuclear Regulatory Commission rules on the Yucca Mountain appeals before the Commission before it hears oral arguments in a combined lawsuit over the planned termination of the spent fuel repository project. Initially, the Court had expedited the schedule oral arguments for September 23<sup>rd</sup>. The Court granted the Nuclear Regulatory Commission's and Department of Justice's July 2<sup>nd</sup> motion to vacate the briefing and oral argument schedules and place the case on hold pending the outcome of the Commission's decision. The Court did direct all affected parties to file status reports every 30 days and to file motions within 10 days after the Commission's ruling. A copy of the order is attached.

57. On July 29<sup>th</sup> the Inspector General for the Department of Energy (DOE) issued a second report on the Yucca Mountain Project, entitled "Resolution of Questioned, Unresolved and Potentially Unallowable Costs Incurred in Support of the Yucca Mountain Project". As the DOE is preparing to close its books on Yucca Mountain, auditors identified specific costs totaling nearly \$179 million that need to be resolved as part of the Yucca Mountain shut down. Of the \$179 million nearly \$160 million is attributable to subcontractor costs that remain unresolved until audited. The Inspector General urged settlement of the outstanding financial issues so that all disallowed costs are settled and funds recouped. A copy of the report is attached.

**Executive Committee Officers:**

David Wright, Chairman  
Commissioner, SC Public Service Commission  
Renze Hoeksema, Vice Chairman  
Director of Federal Affairs, DTE Energy  
David Boyd, Membership  
Chairman, MN Public Utilities Commission  
Robert Capstick, Finance  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee  
Greg White, Communications  
Commissioner, MI Public Service Commission



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**For Immediate Release**  
Thursday, July 1, 2010

For More Information Contact:  
Commissioner David Wright, Chairman, (803) 896-5180  
Martez Norris, Executive Director, (910) 295-6658

### **Law over Politics**

A group of state utility regulators, attorneys general, electric utilities and others, today praised the Atomic Safety and Licensing Board (ASLB) for rejecting the Department of Energy's (DOE) attempt to withdraw with prejudice its license application from the Nuclear Regulatory Commission (NRC) for a national permanent repository at the Yucca Mountain site in Nevada. The ASLB pointed out in its Order that the DOE conceded during the June hearings that its license application is not flawed, nor is the Yucca Mountain site unsafe, but sought to withdraw its application as a "matter of policy."

The Nuclear Waste Strategy Coalition (NWSC), a diverse group of 49 member organizations including utilities, state utility commissions, cities and tribal organizations representing 32 states, said that the decision is a win for electricity consumers and a victory for the rule of law over political expediency.

The ASLB ruled on Tuesday that the DOE, at the direction of the Obama Administration, did not have authority to withdraw its license application with prejudice from the NRC.

"Members of our coalition strongly believe the DOE should proceed with the license application process so that we will find out once and for all whether the Yucca Mountain site is suitable as the nation's permanent geologic repository," said David Wright, a member of the South Carolina Public Service Commission and Chairman, Nuclear Waste Strategy Coalition. "No one has ever denied that a deep geological repository is needed."

"If the DOE succeeds in withdrawing its license application, it will also succeed in the dismantling of 30 years of scientific and technological studies and reports carried out at the Yucca Mountain site and throwing away \$10 billion in electricity consumers have invested in the project after the site was selected by Congress," Wright said. The ASLB, a three-judge panel appointed by the NRC, correctly denied the DOE's motion since the 1982 Nuclear Waste Policy Act, as amended, does not give the Secretary of Energy any authority to withdraw the license application that the Act requires the Secretary to file, and that the Secretary cannot substitute his policy for that established by the U.S. Congress.

A final decision on the DOE motion to withdraw its application is expected to be made by the five members of the NRC. "We trust the NRC Commissioners also will decide the matter based on the rule of law and therefore uphold the ASLB's courageous decision," Wright said. "We also urge Congress to maintain adequate funding to continue the licensing process in a timely and vibrant manner, and that oversight Committees' ensure the DOE has maintained the required personnel, records and data to support the integrity of this process going forward. The Administration owes that to the citizens who have paid into the Nuclear Waste Fund over the past 28 years."

The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 49 member/affiliate organizations in 32 states, committed to reforming and adequately funding the U.S. civilian high-level nuclear waste transportation, storage, and disposal program.



Department of Energy  
Washington, DC 20585



10/2

MEMORANDUM FOR: [REDACTED]

FROM: DAVID ZABRANSKY *[Signature]*

SUBJECT: SPECIFIC REDUCTION IN FORCE NOTICE OF SEPARATION

DATE: JULY 7, 2010

This is to provide you with official notice that in accordance with the Deputy Secretary's memorandum of February 3, 2010 concerning the affect of the President's FY 2011 budget request eliminating funding for the Office of Civilian Radioactive Waste Management (RW), the position of [REDACTED] GS [REDACTED] 14, that you currently occupy, position number [REDACTED] located in the OFFICE OF TECHNICAL MANAGEMENT, will be abolished. It has been determined, through application of the Reduction in Force (RIF) regulations (5 CFR Part 351), that there are no other positions within the competitive area to which you have an assignment right.

This RIF action has been reached on the basis that the Office of Civilian Radioactive Waste Management and all positions within your competitive area and level will be abolished on September 30, 2010. Therefore, you will be separated from Federal service on September 30, 2010.

General information concerning the application of RIF procedures may be found at OPM's website at [http://www.opm.gov/Reduction\\_In\\_Force/employee\\_resources/index.asp](http://www.opm.gov/Reduction_In_Force/employee_resources/index.asp). Copies of the RIF regulations and the records on which this action is based are being maintained in the Headquarters Human Resources Operations Division. You may make an appointment to review this material by calling either your servicing Human Resources Specialist, Ms. Tiffany Sample on (202) 586-9289 or Ms. Tracy Warrick, Supervisory Human Resources Specialist on (202) 586-6788. If you are a bargaining unit employee, you are entitled to have a National Treasury Employees Union (NTEU) representative assist you in reviewing your personnel records or files relating to this RIF action. Questions concerning NTEU representation should be directed to Ms. Theresa Heinicke of the Headquarters Labor and Employee Relations Office on (202) 586-8469.



Because you are eligible for an immediate annuity, you are not entitled to severance pay. You are considered to be eligible for an immediate annuity if you meet the age and service requirements for a voluntary retirement (this includes MRA+10 for FERS employees), discontinued service retirement, or early out retirement. Information about benefits for separated employees and retirement benefits can be found in the Attachment 1 "The Employee's Guide to RIF Separation Benefits," which is also available at OPM's website at [http://www.opm.gov/Reduction\\_In\\_Force/employee\\_resources/EGRIFBEN.asp#TOD](http://www.opm.gov/Reduction_In_Force/employee_resources/EGRIFBEN.asp#TOD). (NOTE: Any section of this guide that covers information related to severance pay and/or its computations are not applicable to you.) You may contact Ms. Toshia Brown at (202) 586-6726 if you have any questions about your RIF Separation or Retirement Benefits.

In addition, you will receive a lump-sum payment for the accumulated annual leave credited to you at the time of separation.

This notice also establishes your potential eligibility for priority consideration if you are found well qualified for Federal vacancies in your local commuting area under OPM's Interagency Career Transition Program (ICTAP). After you have been separated, you will be eligible for reemployment assistance through the Department of Energy's Reemployment Priority List. Information on the Department of Labor's Career One Stop Employment Tools and Career Transition website can be found at <http://www.careeronestop.org/>

You have the right to appeal this action to the Merit Systems Protection Board (MSPB). However, you may not file the appeal until the day after the effective date of your separation from Federal service, and you must file no later than 30 calendar days after the effective date. You have the right to be represented by an Attorney in this matter or any other person you may choose. Your appeal must be filed in writing with the appropriate MSPB office by personal delivery, by facsimile, by mail, by commercial overnight delivery, or via the MSPB online appeal process. Information on how and where to file an MSPB appeal are included in Attachment 2, "How to File an Appeal". Under the provisions of 5 CFR 1201.22(c), if you do not submit an appeal within 30 days, it will be dismissed as an untimely filed unless a good reason for the delay is shown. The MSPB judge will provide you an opportunity to show why your appeal should not be dismissed as untimely.

So that we have a record that you have received this notice, please sign and date the Acknowledgment of Receipt Form at the end of this letter and return it to an HR representative from your servicing Human Resources Office or mail it to the address noted on the form.

On behalf of the management of the Office of Civilian Radioactive Waste Management and the Department of Energy, I want to express my sincere appreciation for your dedicated service, commitment and the contributions you have made toward the accomplishment of our mission.

**BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE**

1800 K Street, NW, Suite 1014

Washington, DC 20006

July 5, 2010

**TRANSMITTAL VIA ELECTRONIC MAIL**

The Honorable Marge KilKelly, Chair  
Maine Yankee Community Advisory Panel  
5 McCobb Road  
Dresden, ME 04342

Dear Ms. KilKelly:

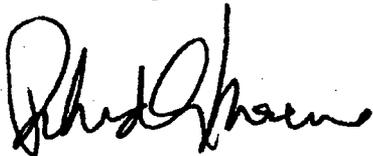
Thank you very much for your letter dated March 10, 2010, in which you discussed spent nuclear fuel currently stored at the Maine Yankee site. You invited the Blue Ribbon Commission on America's Nuclear Future ("the Commission") to visit the site, and also to meet with the Community Advisory Panel (CAP) to discuss management and removal of the SNF stored there. On behalf of the Commission, we would be very pleased to accept your kind invitation.

The Commission has recently formed several subcommittees to help fulfill its charter, which is to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Transportation and Storage Subcommittee is focusing specifically on issues related to interim storage and eventual transportation, including those at shutdown sites such as Maine Yankee. The Subcommittee would very much like to hear the concerns and recommendations of the CAP, other officials and stakeholders, and members of the public.

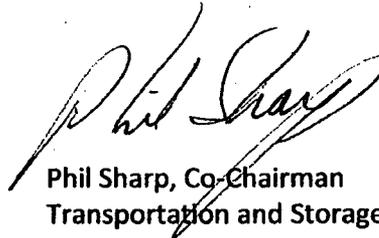
If it is convenient for you, the Subcommittee would like to come to Wiscasset on Tuesday, August 10, 2010, to tour the ISFSI and to learn about the issues affecting Maine Yankee. Alex Thrower of the Commission staff will be contacting you and Maine Yankee officials shortly to initiate logistical arrangements.

Thank you again for your kind invitation. If you have any questions, or would like more information on this or any other matter, please contact Mr. Thrower via phone (202-489-9020), email ([alex.thrower@blueribboncommission.net](mailto:alex.thrower@blueribboncommission.net)), or at the address above.

With best regards,



Richard A. Meserve, Co-Chairman  
Transportation and Storage Subcommittee



Phil Sharp, Co-Chairman  
Transportation and Storage Subcommittee

**Congress of the United States**  
Washington, DC 20510

July 6, 2010

Secretary Stephen Chu  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585-0002

Dear Secretary Chu:

We write today to request that the Department of Energy immediately halt all actions to dismantle operations at Yucca Mountain at least until legal action regarding the withdrawal of the application is resolved by the DC Circuit Court and the Nuclear Regulatory Commission.

The DC Circuit Court has taken the important step of approving the motion to expedite legal actions and has combined the cases involving the State of Washington, State of South Carolina, Aiken County, and Tri-Cities, Washington community leaders. This is a clear demonstration by the Court that the merits of the case must be heard and ruled upon prior to further action by the Department of Energy to shut down Yucca Mountain.

On June 29, 2010, the Nuclear Regulatory Commission's Atomic Safety and Licensing Board denied the Department's motion to withdraw its license application for Yucca Mountain, a clear statement that the Department does not have the authority under the Nuclear Waste Policy Act to unilaterally terminate Yucca Mountain.

In light of the recent legal and regulatory actions, we are deeply troubled that the Department continues to move forward with terminating the project regardless of this decision. We are also concerned that the Department is using its budget proposal in an attempt to justify the termination of Yucca Mountain.

As you know, the Nuclear Waste Policy Act designated Yucca Mountain as the only candidate site for the national repository. Congressional intent is clear – Congress has voted several times to retain Yucca Mountain as the national repository. We are deeply disappointed that DOE has overstepped its bounds and has ignored congressional intent without peer review or proper scientific documentation in its actions regarding Yucca Mountain.

We ask that you recognize the letter and spirit of the law, honor the timeline set by the court, and halt all efforts to reprogram funds or terminate contracts related to Yucca Mountain.

Thank you for your consideration and we look forward to your timely response.

Sincerely,

Patty Murray

Jan Neuhardt

Laura Alexander

Jin Clark

Kay Bailey Fitchison

Mary Sandrin

Dynne Snow

Giff Bond

Georgi Taylor

Sally Chaulkin

Robert

Jim DeMott

John McLean

John Corrigan

Jim Bunning

James

John

Jeff Sessions

Mike Enzi

Jan E. Piel

Paul Cochran

John Barrasso

Sam Bramble

John Spies

Eric Carter

4<sup>th</sup> Boston

Frank Lopez

Steve Penn

D. Beckert

Rick Loran

Joe Wilson

Ben Inglis

Mike Cryer

Susan Collins

Norm Richs

James E. Left

Ken Russell

Rich Davis

R. Helingrupen

Coach, Methuen Rodger

Frank

Bill Smith

Henry E. Bunt

Barry Stupak

Carl Brown  
Walt Griffith

Don Dulles  
Pete Olson

Larry Kim

John Kline  
Steve Gray

Lynn Jenkins

Rich Kim

Brett Luthrae

Jeff Stacey

Ging Boyer-White

Mark

John Shedy  
John Linder

Judy Briggs

Garb Wolf

~~Robert~~

Blaine Jutzger

Robt E. Anden

Bob Doolittle

John E.

Paul A. Kajorski

John J. Duran

E. Ponce

Jo Bonner

~~Paul~~

Jack Kingston

Ralph M. Hall

Joe Courtney

Denny Rellery

J. B. II-17

~~D. O. P.~~

Sue Myrick

Xu Albert

Paul Mergals

Peter S. S. S.

~~Lee~~

Doug Walden

E. C. T. M.

Harold Ryan

Tim & Lois Buel

Jim Senn

Michael Bachmann

~~W. S.~~

J. R. W.

S. Whitfield

## MAINE YANKEE

321 Old Ferry Road, Wiscasset, Maine 04578

For Immediate Release: July 6, 2010

Contact: Eric Howes, 207-631-1362

### **Maine Yankee, CAP Welcome Blue Ribbon Commission Members Urge Priority Removal of Spent Nuclear Fuel from Decommissioned Sites**

**Wiscasset, Maine** – Maine Yankee and its Community Advisory Panel on Spent Nuclear Fuel Storage and Removal welcome news that the Storage & Transport Subcommittee of the Blue Ribbon Commission on America's Nuclear Future has accepted the CAP's invitation to hold a meeting in Wiscasset. The meeting is scheduled for August 10 with details to be announced.

In their July 5 letter to CAP Chair Marge Kilkelly, Subcommittee Co-Chairmen Richard . Meserve and Phil Sharp said, "The Subcommittee would very much like to hear the concerns and recommendations of the CAP, other officials and stakeholders, and members of the public." The Subcommittee's focus is on issues related to interim storage and eventual transportation of spent nuclear fuel.

The CAP and Maine Yankee thank the New England Governors, members of the New England congressional delegation, and the New England Council for their support in encouraging the Blue Ribbon Commission to visit a decommissioned plant site in the region.

CAP Chair Marge Kilkelly said, "We are delighted and honored that the Storage and Transport Subcommittee has accepted the CAP's invitation to come to Wiscasset to learn first hand about the unique circumstances of former reactor sites like Maine Yankee that continue to store spent nuclear fuel years after the end of plant decommissioning. We are prepared to explain to Commission members why it makes sense on a priority basis to move spent nuclear fuel from these sites to centralized interim storage. CAP members have been involved with the spent nuclear fuel issue for 13 years. We believe it is in the best interest of the industry, ratepayers, taxpayers and host communities to prioritize sites like Maine Yankee that no longer are home to operating plants. We believe our CAP and those at Connecticut Yankee and Yankee Rowe in Massachusetts have a unique experience and a community perspective that is an essential element which will help the Commissioners with their important work."

Maine Yankee's Chief Nuclear Officer Wayne Norton, who also chairs the national Decommissioning Plant Coalition representing single-unit shutdown reactor sites, and serves as president and CEO of Connecticut Yankee and Yankee Rowe said, "We are encouraged by the growing number of voices such as the National Association of

Regulatory Utility Commissioners and the National Conference of State Legislatures that are urging the priority removal of spent nuclear fuel from decommissioned reactor sites. This will reduce the number of sites storing spent nuclear fuel; relieve ratepayers of the financial burden of on-site storage at sites no longer producing electricity; and make these sites available for other useful purposes.” Members of the DPC include Maine Yankee, Connecticut Yankee, Yankee Rowe, LaCrosse, in WI, and Rancho Seco in CA.

On January 29 U.S. Department of Energy Secretary Chu appointed the 15 member Blue Ribbon Commission on America’s Nuclear Future “to provide recommendations for developing a safe, long-term solution to managing the Nation’s used nuclear fuel and nuclear waste.” The Commission is charged with issuing an interim report within 18 months and a final report within two years.

For more information about Maine Yankee, Connecticut Yankee, Yankee Rowe and their community advisory boards go to <http://www.3yankees.com/>. For information about the Blue Ribbon Commission on America’s Nuclear Future go to <http://brc.gov/>.

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**Blue Ribbon Commission on America's Nuclear Future  
Disposal Subcommittee  
July 7, 2010**

**Washington Marriott, Metro Center  
775 12<sup>th</sup> St., NW  
Washington, DC**

**Agenda**

Public Session

8:00 a.m.	Open Meeting, Review Agenda	Tim Frazier, Designated Federal Officer
8:05 a.m.	Welcome, Opening remarks	Co-Chairs Hagel, Lash Subcommittee members
8:15 a.m.	The need and the technical options for disposal	Dr. Chris Whipple, <i>Principal, Environ</i>
8:45 a.m.	Intergovernmental and local consideration of policy choices	Jim Williams, <i>Western Governors Association</i>
9:15 a.m.	The Nevada experience	Bruce Breslow, <i>Executive Director, Nevada Agency for Nuclear Projects</i>
9:45 a.m.	Break	
10:00 a.m.	The Nevada experience – local perspectives	Panel: Darrell Lacy, <i>Nye Co. Nuclear Waste Repository Project Office</i> John Gervers, <i>consultant to the Clark County Nuclear Waste Division</i> Dr. Mike Baughman, <i>consultant to the Lincoln County Commission</i> Judy Treichel, <i>Executive Director, Nevada Nuclear Waste Task Force</i>

11:00 a.m.	The New Mexico experience	Ron Curry, <i>Secretary, New Mexico Environment Department</i>
11:30 a.m.	The New Mexico experience - local perspectives	Panel: Dr. Lokesh Chaturvedi, <i>fmr. Deputy Director, Environmental Evaluation Group</i> Don Hancock, <i>Southwest Research and Information Center</i> John Heaton, <i>State Representative</i> Dr. Peter Swift, <i>Sandia National Laboratories</i>
12:30 p.m.	Lunch	
1:30 p.m.	"Rethinking High-Level Waste Disposal" Position statement overview	Dr. Frank Parker, <i>Vanderbilt University</i>
2:00 p.m.	The Canadian experience and repository program status	Liz Dowdeswell, <i>Council of Canadian Academies</i>
2:30 p.m.	Overview of International Repository Siting Experience	Dr. Dan Metlay, <i>Nuclear Waste Technical Review Board</i>
3:00 p.m.	Public Comments	
3:45 p.m.	Adjourn public session	
<u>Deliberative Session</u>		
4:00 p.m.	Subcommittee deliberations	Subcommittee members and staff
5:00 p.m.	Adjourn meeting	



**The Secretary of Energy**  
Washington, DC 20585

July 7, 2010

The Honorable Ralph Hall  
Ranking Member  
Committee on Science and Technology  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Hall:

Thank you for your February 3, 2010, letter regarding the decision to terminate the Yucca Mountain project and to convene the Blue Ribbon Commission. I apologize for the delay in responding.

Expanding our Nation's capacity to generate clean nuclear energy is crucial to our ability to combat climate change, enhance energy security, and increase economic prosperity. The Administration is undertaking substantial steps to expand the safe, secure, and responsible use of nuclear energy.

An important part of a sound, comprehensive, and long-term domestic nuclear energy strategy is a well-considered policy for managing used nuclear fuel and other aspects of the back end of the nuclear fuel cycle. We also remain committed to fulfilling the Government's obligations for spent nuclear fuel and high-level radioactive waste. The funds in the Nuclear Waste Fund will be used to meet that obligation.

However, the Administration believes there are better solutions to our used fuel and nuclear waste disposal needs that can achieve a broader national consensus than Yucca Mountain. Science has advanced considerably since the Yucca Mountain site was chosen 25 years ago. That is why we have convened the Blue Ribbon Commission on America's Nuclear Future (Commission); it will provide advice and make recommendations on alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel and high-level radioactive waste. The Commission plans to issue an interim report within 18 months, and a final report within 24 months of its inception.

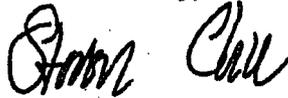
President Obama has directed the Commission to consider a broad range of technological and policy alternatives, and to analyze the scientific, environmental, budgetary, economic, financial, and management issues surrounding each alternative it considers. The Administration looks forward to working closely with Congress and communities around the country that continue to store used nuclear fuel and high-level radioactive waste.



In response to your requests for documents, enclosed is a document that provides the Department's view on the legality of the decisions to discontinue the operation of the Office of Civilian Radioactive Waste Management and to reprogram funds to ensure the orderly closure of the Yucca Mountain Project. Additionally, in response to your request for information regarding the Blue Ribbon Commission, I have included the charter and White House press release regarding the development of the Blue Ribbon Commission.

If you have any questions, please contact me or Ms. Betty A. Nolan, Senior Advisor, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Chu". The signature is written in a cursive, somewhat stylized font.

Steven Chu

Enclosures

cc: The Honorable Bart Gordon  
Chairman, Committee on Science and Technology



Department of Energy  
Washington, DC 20585

April 12, 2010

The Honorable Rodney P. Frelinghuysen  
Ranking Member  
Subcommittee on Energy and Water Development  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Frelinghuysen:

To ensure that the Department of Energy fully addresses the legal concerns you raised during the March 24<sup>th</sup> hearing of the Subcommittee on Energy and Water Development, Secretary Chu has asked me to provide you with our views on the legality of the recent decisions to discontinue operation of the Office of Civilian Radioactive Waste Management ("OCRWM") and reprogram funds to ensure the orderly closure of the Yucca Mountain Project. We are sensitive to the issues you raised and appreciate the opportunity to set forth our analysis.

**I. The Discontinuation and Consolidation of OCRWM**

At the March 24<sup>th</sup> hearing, you expressed concern that the Department might not have statutory authority to discontinue operation of OCRWM. You also were concerned that the proposed discontinuation might violate both Section 302 of the 2010 Energy and Water Development and Related Agencies Appropriations Act ("FY2010 EWD")<sup>1</sup> and § 4604 of the Atomic Energy Defense Act.<sup>2</sup>

*A. The Department Has Authority to Discontinue Operation of OCRWM.*

We agree completely with your observation at the hearing that the Department "ha[s] to have some statutory authority" in order to discontinue operation of OCRWM. We believe that the Department of Energy Organization Act provides that authority since it grants the Secretary of Energy broad discretion "to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary and appropriate." See 42 U.S.C. § 7253(a). The Secretary's discretion does "not extend to the abolition of organizational units or components established by" the Organization Act.<sup>3</sup> But, as you noted, OCRWM was not established by the Organization Act. Rather, it was established by the Nuclear

<sup>1</sup> Pub. L. No. 111-85 (2009).

<sup>2</sup> 50 U.S.C. § 2704; formerly § 3161 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484 (1992).

<sup>3</sup> *Id.* (emphasis added).

Waste Policy Act of 1982 ("NWPA").<sup>4</sup> Accordingly, the Secretary has the authority to "alter, consolidate or discontinue" OCRWM as he deems "necessary and appropriate."

*B. The Proposed Discontinuation Does Not Violate Section 302.*

You also expressed concern that Section 302 of the FY2010 EWD might prohibit the Department from discontinuing OCRWM operations. Section 302(3) provides that "[n]one of the funds appropriated by this Act may be used . . . [to] develop or implement a workforce restructuring plan that covers employees of the Department of Energy."

The text of Section 302(3) dates back to the 1998 Energy and Water Development Appropriations Act ("FY1998 EWD"),<sup>5</sup> which prohibited the use of appropriated funds to "develop or implement a workforce restructuring plan that covers employees of the Department of Energy . . . under section 3161 of the National Defense Authorization Act for Fiscal Year 1993." FY1998 EWD, § 303. Both the text and the legislative history of the FY1998 EWD make clear that the "workforce restructuring plan" provision was intended only to prohibit the Department of Energy from extending to *federal employees* benefits provided by § 3161 of the National Defense Authorization Act for Fiscal Year 1993, to *contractors* affected by the post-cold war downsizing of the Department's defense production complex. See H.R. Rep. No. 105-190, at 126 (1997) ("The Committee has been informed by the Secretary of Energy that the Department plans to extend the provisions of section 3161 to Federal employees at Department of Energy sites. This would provide to Department of Energy employees additional benefits which are not available to any other Federal employees. This was never the intent of this legislation. Federal employees are covered by a multitude of laws which control employee benefits and protections during the downsizing of Federal agencies."). This narrow prohibition has been retained in successive Energy and Water Development Appropriations Acts since FY1998 – including the FY2010 EWD.

The 2009 Omnibus Appropriations Act<sup>6</sup> re-numbered the statutory provisions and consolidated the "workforce restructuring plan" provision in its current form. This reorganization, however, did not change the meaning of that long-standing provision. To the contrary, the phrase "workforce restructuring plan" as carried forward to the FY2010 EWD is a term of art that cannot properly be understood outside its original linkage to § 3161. Indeed, the House Report accompanying the 2009 Omnibus Appropriations Act states that the Act "prohibits the use of funds for workforce restructuring. . . *under section 3161 of Public Law 102-484.*"<sup>7</sup> Likewise, the House Report on the FY2010 EWD states (under the title "Section 3161 Assistance") that "[s]ection 302 prohibits the use of funds for workforce restructuring. . . *under section 4604 of the Atomic Energy Defense Act.*"<sup>8</sup>

<sup>4</sup> Specifically, OCRWM was established by § 304 of the NWPA. See 42 U.S.C. § 10224. Nothing in the NWPA mandates that OCRWM must operate in perpetuity or indicates that the Secretary's authority under the Organization Act was repealed.

<sup>5</sup> Pub. L. No. 105-62 (1997).

<sup>6</sup> Pub. L. No. 111-8 (2009).

<sup>7</sup> H. R. Rep. No. 110-921, at 171 (2008) (emphasis added).

<sup>8</sup> H.R. Rep. No. 111-203, at 195 (2009) (emphasis added).

It is therefore clear that the phrase "workforce restructuring plan" as employed in Section 303 of the FY1998 EWD and carried forward to Section 302 of the FY2010 EWD is a term of art effectively prohibiting the Department from extending to its terminated employees (as opposed to contractors) § 3161 benefits. Were it otherwise, this provision would prohibit the Department from undertaking any reorganization – no matter how minor – that led to the termination of any identifiable group of employees. It is simply not credible that, for the past dozen years, the Department has been prohibited from eliminating any office or terminating any single group of employees. Simply put, Section 302 was drafted to preserve a long-standing, but specific, limitation of Departmental authority that is not applicable here.

Fundamental principles of statutory construction also buttress this understanding of Section 302. Were Section 302 read to prohibit the elimination of any office it would, implicitly, repeal the Secretary's clear authority under the Organization Act to "discontinue . . . organizational units." But "[i]t is . . . a cardinal principle of statutory construction that repeals by implication are not favored." *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168 (1976). See also *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 190 (1978). As the Supreme Court said, ". . . this 'cardinal rule' means that in the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Id.* Here, of course, the statutes are entirely reconcilable. Moreover, the Supreme Court has noted that "the policy [against repeal by implication] applies with even greater force when the claimed repeal rests solely on an Appropriations Act." *Id.*

C. The Proposed Discontinuation Does Not Violate Section 3161.

At the hearing, you noted these "original links" between Section 302 and Section 3161, and asked whether the discontinuation of OCRWM may "actually violat[e] section 3161." We agree that §§ 302 and 3161 are inextricably linked. But we are confident that nothing in Section 3161 prohibits the proposed discontinuation of OCRWM operations.

Section 3161, now codified at 50 U.S.C. § 2704, is titled "Department of Energy defense nuclear facilities workforce restructuring plan"<sup>9</sup> and provides that "[u]pon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce of [that] facility" according to certain prescribed criteria. In particular, the statute provides that, "[i]n preparing the plan . . . the Secretary shall be guided by [certain] objectives," including "to minimize social and economic impacts;" to provide "preference in [future] hiring" to "[e]mployees whose employment . . . is terminated;" and to provide these employees with "relocation assistance" and "retraining, education, and reemployment assistance."<sup>10</sup>

Thus, Section 3161 prescribes certain benefits for "[e]mployees whose employment in positions at [Department of Energy defense nuclear] facilities is terminated." *Id.* at § 2704(c)(2). Regardless whether the Yucca Mountain facility is a "Department of Energy defense nuclear facility" under 50 U.S.C. § 2704(g), Section 2704 prohibits neither the employees' termination nor the reorganization that necessitates it. To the contrary, the statute functions as a guide for

<sup>9</sup> Emphasis added.

<sup>10</sup> See 50 U.S.C. § 2704(c).

reorganization, recognizing "that a change in the workforce at a defense nuclear facility" will at times be "necessary." *Id.* at § 2704(a).<sup>11</sup>

## II. The Reprogramming of Appropriated Funds

At the hearing, you also expressed concern about the Department's plan to reprogram approximately \$115,000,000 of prior appropriations balances for use in the orderly closure of the Yucca Mountain Project. As the Secretary reaffirmed at the hearing, the Department is committed to keeping the Subcommittee apprised of reprogramming actions and, in this case, it provided written notice of its intent to reprogram in a February 17, 2010 letter to Chairman Visclosky. The Secretary has also indicated his intent to confer with you further about this reprogramming decision.

As a legal matter, though, the Department has the right to reprogram funds. The Supreme Court has stated that the authority to reprogram funds is implicit in a lump sum appropriation. *See Lincoln v. Vigil*, 508 U.S. 182, 192 (1993). As the Court said, "... the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way."

As noted in its February 17<sup>th</sup> letter, the Department is exercising this authority to reprogram a total of approximately \$115,000,000 for use within the Repository Program control point and the Program Direction control point for Yucca Mountain Project and program office termination activities within the Nuclear Waste Disposal and Defense Nuclear Waste Disposal appropriations. Thus, the funds reprogrammed will be used consistently with the broad purpose for which they were appropriated. *See* FY2010 EWD.<sup>12</sup>

The Department is mindful that the conference report accompanying the FY2010 EWD included a section titled "Reprogramming Requirements." *See* H.R. Conf. Rep. No. 111-278, at 102 (2009). That section requests that the Department submit a "reprogramming . . . to the House and Senate Committees on Appropriations for consideration before any implementation of a reorganization proposal which includes moving previous appropriations between appropriation accounts." It further requests that the Department "inform the Committees promptly and fully when a change in program execution and funding is required during the fiscal year."

We believe the Department acted in accordance with the spirit of this provision through its February 17<sup>th</sup> letter. It certainly intended to do so. We regret any lapses that may have occurred in communication between the Department and your Committee, and assure you of the Department's intent to keep the lines of communication open going forward.

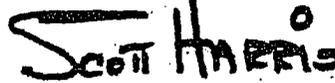
<sup>11</sup> Here, the statute tracks § 643 of the Organization Act, which, as noted, authorizes the Secretary "to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary and appropriate." 42 U.S.C. § 7253(a).

<sup>12</sup> The Department has consistently affirmed that it fully intends to meet its obligations to take possession and dispose of the nation's spent nuclear fuel and high level radioactive waste.

As the Secretary affirmed in his March 26, 2010 letter to Chairman Visclosky, the Department takes very seriously the responsibilities and prerogatives of the Appropriations Committee and the obligations of the Department under the law. We are confident that our actions with respect to the discontinuation of OCRWM operations and the reprogramming of appropriated funds are entirely legal. Nevertheless, we are available to discuss any further concerns you or your staff may have and I am personally available to discuss legal concerns at any time.

The Department looks forward to working with your office toward the development of safe, secure, and workable plans for the long term storage of America's spent nuclear fuel and high level radioactive waste materials.

Sincerely,

A handwritten signature in black ink that reads "Scott Harris". The signature is written in a cursive, slightly stylized font.

Scott Blake Harris  
General Counsel

cc: The Honorable Peter Visclosky, Chairman  
The Honorable Ed Pastor, Vice Chairman

**Reactor and Fuel Cycle Technologies  
Subcommittee Meeting  
Shilo Inn Idaho Falls, Idaho  
July 12, 2010**

**July 12th**

8:30 - 8:40	BRC/subcommittee introduction, overview of process, etc. (Designated Federal Officer and Subcommittee co-chairmen)
8:40 - 9:00	Introduction and historical overview, their mission as NE lead lab, including an overview of capabilities and facilities (John Grossenbacher, Idaho National Laboratory)
9:00 - 10:00	U.S. DOE Nuclear Energy R&D Roadmap Overview (Warren "Pete" Miller, NE)
10:00 - 10:45	Reactors R&D (Phillip Finck, INL)
10:45 - 11:00	Break
11:00 - 11:45	Fuel Cycle R&D Overview (Buzz Savage, NE)
11:45 - 12:30	Separations and Waste Forms R&D (Terry Todd, INL)
12:30 - 1:15	Lunch
1:15 - 2:00	Fuels R&D (Jon Carmack, INL)
2:00 - 2:45	Transmutation R&D (Bob Hill, ANL)
2:45 - 3:00	Break
3:00 - 4:00	Industry R&D (Electric Power Research Institute, John Kessler)
4:00 - 5:00	Public statements

**Blue Ribbon Commission on America's Nuclear Future  
July 14-15, 2010 Meeting**

**Three Rivers Convention Center  
Kennewick, WA**

**Agenda**

Wednesday, July 14

8:00 a.m.	Depart Three Rivers Convention Center for tour of Hanford Site	
	Visit: Columbia Generating Station ISFSI Tank Waste Vitrification Plant High-level Waste Tank Farm Waste Encapsulation and Storage Facility Canister Storage Building	
1:00 p.m.	Lunch at Three Rivers Convention Center	
1:30 p.m.	Review agenda	Tim Frazier, Designated Federal Official
1:35 p.m.	Opening remarks by Commission co-chairs, members	Co-Chairman Hamilton Co-Chairman Scowcroft Commissioners
1:40 p.m.	DOE welcome	Dave Brockman, DOE-RL Manager
1:45 p.m.	Confederated Tribes and Bands of the Yakama Nation	TBD
2:05 p.m.	Nez Perce Tribe	Brooklyn Baptiste, Vice Chairman
2:25 p.m.	Confederated Tribes of the Umatilla Indian Reservation	Stuart Harris, Director, Department of Science and Engineering
2:45 p.m.	Wanapum Tribe	Rex Buck, Leader
3:05 p.m.	Break	

3:20 p.m.	Oregon Department of Energy	Ken Niles, Nuclear Safety Division
3:40 p.m.	Hanford Advisory Board	Susan Leckband, Chair
4:00 p.m.	Tri-City Development Council (TRIDEC)	Carl Adrian, President/CEO
4:20 p.m.	Heart of America Northwest	Gerald Pollett, Executive Director
4:40 p.m.	Energy Northwest	Vic Parrish, CEO
5:00 p.m.	Adjourn meeting	

Thursday, July 15

8:30 a.m.	DOE reviews agenda Welcoming remarks by Co-Chairs	Tim Frazier Co-Chairman Hamilton Co-Chairman Scowcroft
8:40 a.m.	Hanford Communities	Ed Revell, Chair
9:00 a.m.	Yakama Environmental and Waste Management Program	Russell Jim
9:15 a.m.	Office of U.S. Senator Patty Murray	TBD
9:30 a.m.	Office of U.S. Senator Cantwell	TBD
9:45 a.m.	Office of Rep. Doc Hastings	TBD
10:00 a.m.	Office of Attorney General Rob McKenna	Mary Sue Wilson, Senior Assistant Attorney General
10:15 a.m.	Break	
10:30 a.m.	Washington Governor	Governor Christine Gregoire
11:00 a.m.	Commission discussions	
12:00 noon	Public comment	
1:00 p.m.	Adjourn meeting, hold brief media availability	

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_)  
In the Matter of )  
)  
U.S. DEPARTMENT OF ENERGY ) Docket No. 63-001-HLW  
)  
(High-Level Waste Repository) )  
)  
\_\_\_\_\_)

**NOTICE OF RECUSAL**

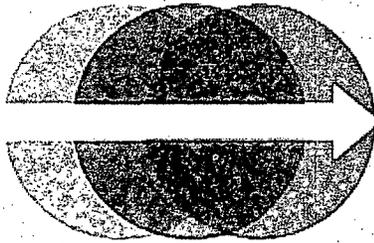
Prior to my appointment as a Commissioner, I chaired the Independent Performance Assessment Review (IPAR) Panel, which was tasked by Sandia National Laboratories (SNL), the U.S. Department of Energy's Lead Laboratory for Repository Systems, to conduct a high-level review for SNL and its senior management on the adequacy of the long-term performance assessment for the proposed Yucca Mountain repository. The panel conducted its review between March, 2007 and March, 2008. It issued its report on March 31, 2008 (LSN #: DEN001598189).

In consideration of my prior service to SNL on the proposed Total System Performance Assessment for the Yucca Mountain application, I have concluded that I should recuse myself from this adjudicatory proceeding involving the U.S. Department of Energy's application for authorization to construct a high-level waste repository at Yucca Mountain, Nevada.

I decided not to participate in this proceeding prior to and without consideration of the unrelated motion for recusal/disqualification that was filed by the State of Washington, State of South Carolina, Aiken County, South Carolina, and White Pine County, Nevada, on July 9, 2010. My recusal decision is based solely on my prior engagement by Sandia National Laboratories.

    /RA/      
George Apostolakis  
NRC Commissioner

Dated at Rockville, Maryland  
this 15<sup>th</sup> day of July, 2010



The Select Committee  
on Energy Independence  
& Global Warming



F. James Sensenbrenner Jr., Ranking Republican Member

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## Members Urge NRC to Follow Board's Ruling on Yucca Mountain

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July 15, 2010

### Members Urge NRC to Follow Board's Ruling on Yucca Mountain

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July 15, 2010

Chairman Gregory Jaczko  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Jaczko:

We are writing to express our support of the June 29, 2010 decision by the Atomic Safety and Licensing Board (Board) to deny the Department of Energy's (DOE) motion to withdraw the license application to construct a high-level nuclear waste repository at Yucca Mountain, Nevada.

As clearly expressed in the Board's decision, DOE does not have the authority to withdraw the license application simply as a matter of policy. At no point in DOE's motion to withdraw did the agency fault any scientific or technical portions of the license application. This omission highlights the shaky grounds on which DOE rested its argument to shutter Yucca Mountain.

We agree with the Board's observation that congressional intent was clear in the Nuclear Waste Policy Act (NWPA). NWPA was specific with the associated procedures to prepare Yucca Mountain for waste storage. Congress did not pre-approve the license application; however, once the license application was initially submitted, the Nuclear Regulatory Commission (NRC) was required to consider it. Congress has repeatedly voted in support of locating a national high-level waste repository at Yucca Mountain. DOE cannot short change proper examination of the repository because of political preferences.

The massive investment in both time and taxpayer dollars warrant proper consideration of the license application by the NRC. Over the course of thirty years, approximately \$10 billion have been spent on Yucca Mountain. Throwing away this investment due to a campaign-pledge is not acceptable. Should the Commission overturn the Board's decision, DOE and Congress will be forced to start anew to address spent fuel, which will only cost more taxpayer dollars, increase the government's liability, and burden facilities that are currently storing waste on-site.

Further, we are concerned that some Commissioners have pre-judged the outcome of this decision. In their February 9, 2010 confirmation hearing, Senator Boxer, Chairwoman of the Environment and Public Works Committee, which is the oversight committee of jurisdiction said, "I have a question here for all three of you from Senator Reid. You can just answer it yes or no. If confirmed, would you second guess the Department of Energy's decision to withdraw the license application for Yucca Mountain from NRC's review?" Commissioners Apostolakis, Magwood, and Ostendorff all answered "no." We think it was an inappropriate commitment and as nominees, the commissioners should not have faced intense pressure both from Environment and Public Works Chairwoman Boxer and Senate Majority Leader Reid. The Commission should examine each case on its merits, rather than pre-judging an argument. We hope the entire Commission considers the Board's decision in an objective manner.

Lastly, we call for the Commission to make all relevant documents related to DOE's motion to withdraw public. Given the significant ramifications of DOE's actions, it is in the public's interest to be fully informed of the entire decision-making process.

With these thoughts in mind, we urge you to leave the Board's decision in place.

Sincerely,

\_\_\_\_\_  
F. James Sensenbrenner, Jr.  
Member of Congress

\_\_\_\_\_  
Bob Inglis  
Member of Congress

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Joe Wilson  
Member of Congress

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Gresham Barrett  
Member of Congress

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Cathy McMorris Rodgers  
Member of Congress

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Doc Hastings  
Member of Congress

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John Shimkus  
Member of Congress

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Jo Bonner  
Member of Congress

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Donald Manzullo  
Member of Congress

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Steven LaTourette  
Member of Congress

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Lee Terry  
Member of Congress

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Paul Broun  
Member of Congress

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Pete Olson  
Member of Congress

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Dennis Rehberg  
Member of Congress

Cc: Commissioner Kristine L. Svinicki  
Commissioner George Apostolakis  
Commissioner William D. Magwood, IV  
Commissioner William C. Ostendorff

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Related Press Release(s):

- [Members Urge NRC to Follow Board's Ruling on Yucca Mountain](#)

Select Committee on Energy Independence and Global Warming - Republicans  
H2-344 Ford House Office Building

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON SCIENCE AND TECHNOLOGY

SUITE 2321 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6301  
(202) 225-6375  
<http://science.house.gov>

July 20, 2010

The Honorable Steven Chu  
Secretary  
Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Dear Secretary Chu:

We write to you once again to seek further explanation and documentation regarding the Administration's decision to abandon the development of the Yucca Mountain site as a nuclear waste repository. Despite a nearly \$10 billion investment, clear congressional direction and legal obligation, and robust scientific study and oversight, the Administration continues to take unexplained actions that could ultimately sacrifice the project.

In May 2009 and February 2010 we wrote you to reconcile your statements in support for "restarting" nuclear power with Administration actions that risk materially delaying the expansion of nuclear energy in the United States.<sup>12</sup> On June 1, 2009 and July 7, 2010 you responded with brief letters noting your plan to establish a blue ribbon commission on nuclear waste storage but failing to provide the requested records.<sup>3</sup>

Follow up discussion between Committee staff and Department staff confirmed that you consider the June 1, 2009 letter to be responsive and that the Department does not possess documents related to the decision or our inquiry. If this is indeed true, we find it alarming that your Department made an important decision that could have significant adverse consequences for the nation and the American taxpayer without conducting a comprehensive analysis.

The Nuclear Regulatory Commission's (NRC) recent ruling that the Department of Energy lacked the authority to withdraw its application for Yucca Mountain further reinforces the need for Congress to review the circumstances surrounding this decision.

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<sup>1</sup> Letter from Reps. Ralph Hall, Joe Barton, Paul Broun, and Greg Walden to Secretary Chu, May 7, 2009 (copy attached).

<sup>2</sup> Letter from Reps. Ralph Hall, and Paul Broun to Secretary Chu, February 3, 2010 (copy attached).

<sup>3</sup> Letter from Secretary Chu to Reps. Ralph Hall, Joe Barton, Paul Broun, and Greg Walden, June 1, 2009; and Letter from Secretary Chu to Reps. Ralph Hall and Paul Broun, July 7, 2010 (copy attached).

The Honorable Chu

July 20, 2010

Page two

In their decision, the NRC's Atomic Safety and Licensing Board Administrative Judges stated that:

[U]nder the NWPA [Nuclear Waste Policy Act] ultimately authority to make a siting decision is not committed to the discretion of either the Secretary of Energy or the President, but instead rests with Congress.<sup>4</sup>

Furthermore, they went on to reference Congressional intent by citing the debate surrounding S. 6476 which stated:

A license application will be submitted by the Department of Energy for Yucca Mountain and over the next several years, the Nuclear Regulatory Commission will go through all the scientific and environmental data and look at the design of the repository to make sure that it can meet environmental and safety standards; This will be done by scientists and technical experts.<sup>5</sup> [emphasis added]

In a speech before the National Academies of Science, the President stated "I want to be sure that facts are driving scientific decisions -- and not the other way around."<sup>6</sup> Similarly, when signing the new Executive Order regarding stem cell research, the President stated:

We base our public policies on the soundest science; that we appoint scientific advisors based on their credentials and experience, not their politics or ideology; and that we are open and honest with the American people about the science behind our decisions.<sup>7</sup>

To date, the Department of Energy has not provided any scientific or technical justification for determining that Yucca Mountain "is not a workable option," arguing that the decision is, in fact, a "matter of policy."<sup>8</sup> We have serious concerns that a decision of this magnitude was made without proper authority and without any semblance of scientific or technical review.

Accordingly, we once again ask that you provide all records responsive to the May 7, 2009, and February 3, 2010 letters. Additionally, we request that you provide the following records, as defined in the attachment, for the period of July 1, 2008 to the present.

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<sup>4</sup> NRC ASLB, Memorandum and Order, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (June 29, 2010)

<sup>5</sup> Ibid.

<sup>6</sup> Remarks by the President at the National Academy of Sciences Annual Meeting, April 27, 2009.

<sup>7</sup> Remarks by President Barack Obama - As Prepared for Delivery, Signing of Stem Cell Executive Order and Scientific Integrity Presidential Memorandum, March 9, 2009.

<sup>8</sup> NRC ASLB, U.S. Dep't of Energy Motion to Withdraw, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (March 3, 2010).

The Honorable Chu

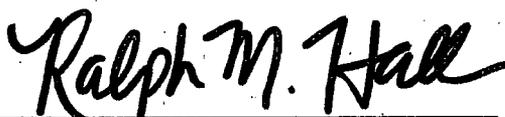
July 20, 2010

Page three

- 1.) All records related to the Department's Motion to Withdraw its pending licensing application with prejudice for a permanent geologic repository at Yucca Mountain, Nevada;
- 2.) All records related to any decision to terminate, reduce, or limit funding for the Yucca Mountain project.
- 3.) All records related to the discontinuation or altering of standard monitoring and data collection at the site.
- 4.) All records related to the Department's policies and procedures relating to preserving and archiving documents related to the Yucca Mountain Repository License Application.

Please deliver two sets of copies to 394 Ford House Office Building. As part of this request was initially made well over a year ago, I would appreciate your response no later than July 30, 2010. If you have any questions or needs additional information, please contact either Mr. Tom Hammond or Mr. Dan Byers with the Science and Technology Committee minority staff at (202) 225-6371, or Mr. Andy Zach with the Select Committee on Energy Independence and Global Warming minority staff at (202) 225-0110.

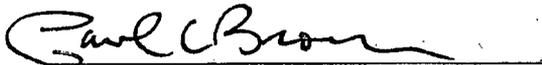
Sincerely,



REP. RALPH HALL  
Ranking Member  
Committee on Science and Technology



REP. F. JAMES SENSENBRENNER  
Ranking Member  
Select Committee on Energy Independence  
and Global Warming



REP. PAUL BROUN, M.D.  
Ranking Member  
Subcommittee on Investigations  
and Oversight  
Committee on Science and Technology

Attachment  
Enclosures

cc: The Honorable Bart Gordon, Chairman  
Committee on Science and Technology

The Honorable Brad Miller, Chairman  
Subcommittee on Investigations and Oversight  
Committee on Science and Technology

The Honorable Edward Markey, Chairman  
Select Committee on Energy Independence  
and Global Warming

**NOTATION VOTE**

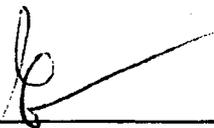
**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Gregory B. Jaczko  
**SUBJECT:** SECY-09-0090 – FINAL UPDATE OF THE  
COMMISSION'S WASTE CONFIDENCE DECISION

Approved  Disapproved  Abstain

Not Participating

**COMMENTS:** Below  Attached  None

  
\_\_\_\_\_  
SIGNATURE

7/22/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Chairman Jaczko's Supplemental Comments on SECY-09-0090  
Final Update of the Commission's Waste Confidence Decision**

This update to our Waste Confidence Decision has been with the Commission for some time and understandably so given the complexity of the issues involved. Although Commissioner Svinicki and I have had the benefit of reviewing this rule for more than a year, our more recently confirmed colleagues have not. Thus, the Commission has taken the necessary additional time before moving forward with this proposal. I believe that time has proven very productive. Now that the full Commission has had the opportunity to become familiar with the lengthy history of our Waste Confidence Decision and fully consider the complexity of this matter, I propose the following path forward in hope of reaching a consensus on this important issue: The Commission (1) approve the Waste Confidence update, as revised below, and (2) direct the staff to conduct further analysis to support a future update to account for the possibility of additional, indefinite storage of spent nuclear fuel.

First, I propose approval of the issuance of a final rule revising our generic determination on the environmental impacts of storage of spent fuel at, or away from, reactor sites after the expiration of reactor licenses with the following revisions to 10 C.F.R. § 51.23 and Waste Confidence Findings (2) and (4):

**§ 51.23: Temporary storage of spent fuel after cessation of reactor operation – generic determination of no significant impact.**

- (a) The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin and at either onsite or offsite independent spent fuel storage installations. Further, the Commission believes there is reasonable assurance that sufficient mined geologic repository capacity will be available in the foreseeable future.

Finding 2: The Commission finds reasonable assurance that sufficient disposal capacity, including but not limited to mined geologic repository capacity, will be available to dispose of the commercial high level waste and special nuclear fuel generated by any reactor in the foreseeable future.

Finding 4: The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life of operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin and either onsite or offsite independent spent fuel storage installations.

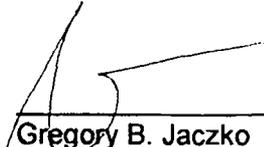
Second, I propose directing the staff to also begin a longer-term rulemaking effort that would address impacts of storage beyond 100 years. While I remain confident that we will achieve a safe and environmentally sound means to permanently dispose of the nation's spent nuclear fuel, I believe that the prudent course of action is to direct the staff to conduct further analysis and update the Waste Confidence findings to account for the possibility of additional, indefinite

storage of spent nuclear fuel. While I believe that the staff's analysis showing that storage will be safe and will not result in environmental consequences for 100 years should be more than adequate to account for the time until permanent disposal becomes available, an understanding of the consequences of storage for longer periods of time will be helpful in informing future Commission policy decisions on this subject. I therefore propose that the staff be directed to prepare an update to the Waste Confidence Findings and Proposed Rule to account for storage at onsite storage facilities, offsite storage facilities, or both, for more than 100 years, but no longer than 300 years, from the end of licensed operations of any nuclear power plant, which may include the term of a revised or renewed license.

Given the breadth of the analysis necessary to support a Waste Confidence update, the Commission should exercise its discretionary authority under 10 C.F.R. § 51.20(a)(2) to direct the staff to prepare a draft Environmental Impact Statement. The proposed rule and draft environmental impact statement should be sent to the Commission in an Information Paper five days before they are sent to the office of Federal Register to be published for public comment.

In light of the extensive environmental review that will be necessary to support this proposed rule, the lead responsibility for this rulemaking effort should be shifted from the Office of the General Counsel to the EDO's office. The staff should provide the Commission with updated budget estimates and timelines for this rulemaking. The Office of the General Counsel will continue to provide support to the staff for this rulemaking.

This is a difficult and challenging issue of national significance. I appreciate the staff's continued hard work, as well as the other Commissioners' thoughtful deliberations.

  
\_\_\_\_\_  
Gregory B. Jaczko

7 / 22 / 10  
\_\_\_\_\_  
Date



# Department of Justice

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STATEMENT

OF

MICHAEL F. HERTZ  
DEPUTY ASSISTANT ATTORNEY GENERAL  
CIVIL DIVISION

BEFORE THE

COMMITTEE ON THE BUDGET  
U.S. HOUSE OF REPRESENTATIVE

ENTITLED

"BUDGET IMPLICATIONS OF CLOSING YUCCA MOUNTAIN"

PRESENTED ON

JULY 27, 2010

STATEMENT OF MICHAEL F. HERTZ  
DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION  
U.S. DEPARTMENT OF JUSTICE  
BEFORE THE HOUSE BUDGET COMMITTEE  
JULY 27, 2010

Mr. Chairman, and members of the Committee, I am Michael F. Hertz, and I am a Deputy Assistant Attorney General of the Department of Justice, Civil Division. I am pleased to testify today regarding the status of litigation concerning the Department of Energy's obligations under the Nuclear Waste Policy Act ("NWPA") of 1982. I testified before the Committee in October 2007 and July 2009 regarding the same subject, and this testimony updates and supplements the testimony that I have previously provided.

Let me note at the outset that much of the litigation about which you have asked the Department of Justice to provide testimony is still pending in the Federal courts. As a result, the Department's pending matter policy applies to any discussion of those cases. Pursuant to that policy, I will be happy to discuss matters that are in the public record.

Background

In 1983, pursuant to the NWPA, the Department of Energy ("DOE") entered into 76 standard contracts with entities, mostly commercial utilities, that were producing nuclear power. Through the standard contracts, DOE agreed that by January 31, 1998, it would begin accepting spent nuclear fuel and high-level

radioactive waste (collectively, "SNF") created by the utilities. In return, the utilities agreed to make quarterly payments into the Nuclear Waste Fund ("NWF") created by the statute. The utilities began making payments into the NWF in 1983. To date, DOE has not yet commenced accepting SNF. The commencement date for SNF acceptance at a Federal facility is currently unknown; however, DOE has clearly stated its continued commitment to meeting its obligations for disposing of spent nuclear fuel and high-level radioactive waste.

#### Status Of Court Of Federal Claims Litigation

In response to DOE's delay, utility companies have filed 72 cases in the United States Court of Federal Claims, alleging that DOE's delay in beginning SNF acceptance constituted a breach of contract. The Court of Appeals for the Federal Circuit, in Maine Yankee Atomic Power Co. v. United States, 225 F.3d 1336, 1341 (Fed. Cir. 2000), has ruled that the delay constitutes such a breach.

The utilities' damages claims are largely for the costs incurred to store SNF that they allege DOE would have accepted from them absent the breach -- specifically, storage costs that utilities allege they would not have expended had DOE begun timely performance under the standard contracts. In addition, several utilities have alleged damages arising from the "diminution-in-value" of their plants as the result of DOE's delay, claiming that they realized these damages

when they sold their plants to other utilities as part of the sale.

DOE's most recent estimate of potential liability, which was formulated in 2009 and assumed a projected start date of SNF acceptance of 2020, was as much as \$13.1 billion. This estimate does not fully account for the Government's defenses or the possibility that plaintiffs will not be able to prove the full extent of their claims, and they were created before the Administration's 2009 announcement that it would not proceed to build a repository at Yucca Mountain, Nevada.

The United States Court of Appeals for the Federal Circuit has held that, because the utilities are continuing to perform their obligations under the standard contracts by paying money to the NWF with the expectation of future performance, all claims for breach of the standard contracts are "partial" rather than "total" and damages are only available through the date of the complaints that have been filed. Indiana Michigan Power Co. v. United States, 422 F.3d 1369 (Fed. Cir. 2005). To comply with the applicable statute of limitations, utilities must file new cases with the trial court at least every six years to recover any costs incurred as the result of DOE's delay, and, absent settlement, we will continue to litigate these claims until after DOE begins accepting SNF.

Of the 72 lawsuits filed, 50 cases remain pending either in the Court of Federal Claims or in the Court of Appeals for the Federal Circuit, 11 have been settled, six were voluntarily withdrawn, and five have been litigated through final unappealable judgment. Of the 50 pending cases, the trial court has entered judgment in 17 cases, 13 of which are pending on appeal and the time to appeal on the remaining four of which has not yet elapsed. Six of the 72 cases represent “second-round” claims -- that is, claims that seek recovery for expenditures incurred after the claim period for their initial claims and that are required to be brought in a second lawsuit as a result of the partial nature of the Government’s breach.

The Government’s liability for judgments that have already been entered (most of which are not final because of appeals or remands) and settlements currently stands at approximately \$2.0 billion. This amount covers approximately 60% of the claim-years of liability (that is, the total number of individual years in which individual contract-holders could seek damages for DOE’s failure to accept SNF) that accrued between January 31, 1998 and the end of 2009. In total, the Government has paid approximately \$760 million pursuant to settlements and one trial court judgment that was not appealed. In addition to the approximately 40% of the claim-years through 2009 that are not already the subject of settlements or

judgments, additional Government liability will accrue for as long as DOE is delayed in commencing SNF acceptance at contractually required rates.

As noted, I provided testimony to this Committee concerning these cases in October 2007 and July 2009. Both prior to and since these times, the Department has been actively involved in trying cases, and the judgments issued in these cases have resulted in a large number of appeals being filed and handled. The following chart depicts the progression of SNF cases through trial and to appeal as of October 2007, July 2009, and July 2010:

<b>Status</b>	<b>2007</b>	<b>2009</b>	<b>2010</b>
Voluntarily withdrawn	2	6	6
Settled	7	10	11
Final unappealable judgments	2	4	5
Final judgments on appeal	6	7	13
Final judgments pending determination to appeal	2	0	4
Pending before the trial court	48	44	33
<b>Total</b>	<b>67</b>	<b>71</b>	<b>72</b>

The Department of Justice has conducted 2 SNF trials in 2010. Barring settlements and excluding cases that may be remanded for further proceedings by the Federal Circuit, our current estimate is that we will conduct 8 trials in 2011 and 6 trials in 2012. Because the plaintiffs are suing for partial breach, we also anticipate that, absent settlement, the number of pending cases will increase as additional utilities file second-round claims.

While asserting legitimate defenses to plaintiffs' claims in litigation, we also have made concerted efforts to settle claims. The settlements resolving claims on 17 of the standard contracts in 11 of the cases involve six companies: Exelon Generation, LLC; South Carolina Electric & Gas Company; Omaha Public Power District; Duke Power Company; Florida Power & Light Company; and PSEG Nuclear LLC. These settlements provide for the periodic submission of claims to the contracting officer for costs incurred since the date of the last submission.

We have also recently begun discussions with the utilities as a group to explore the possibility of reaching a standard settlement with a larger segment of the utilities whose claims are currently pending. Because many of the major recurring issues have been resolved as the cases have worked their way through trial and the appellate process, the ultimate success of many types of claims is now more predictable to both the Government and the utilities. Because the claims of a substantial number of the utilities are not substantially affected by issues that require resolution at the appellate level, it may be possible to implement an administrative claims process with these utilities that is less expensive and more efficient than litigation and that achieves largely the same results.

### Proceedings In Other Forums

There are several matters currently pending in the United States Court of Appeals for the District of Columbia Circuit and before the Nuclear Regulatory Commission (“NRC”) that are related to DOE’s obligation to accept SNF. Those cases do not directly implicate the breach of contract cases in the Court of Federal Claims and the Federal Circuit, but could have some effect upon the issues likely to arise during the litigation.

In In Re Aiken County (D.C. Cir.), the States of South Carolina and Washington, a county in South Carolina, and three individuals are seeking review of the Secretary of Energy’s decision to move to withdraw the license application and to terminate other activities related to development of the Yucca Mountain site for a permanent repository for nuclear waste. The District of Columbia Circuit has consolidated the various petitions and is handling them on an expedited basis, with the Government’s brief currently due to be filed on July 28, 2010. In a related matter, an Atomic Safety and Licensing Board of the Nuclear Regulatory Commission has recently held that the Secretary of Energy lacks authority to withdraw the previously submitted license application for Yucca Mountain, and the full NRC has requested briefing from interested parties regarding whether it should “review, and reverse or uphold, the Board’s decision.”

In addition, in National Association of Regulatory Utility Commissioners v. United States Department of Energy (D.C. Cir.), two industry groups and several nuclear reactor owners have filed petitions, which have been consolidated, challenging the continued collection of NWF fees.

#### Payment Of Judgments And Settlements

To date, all payments to the utilities have come from the Judgment Fund. In Alabama Power Co. v. United States Department of Energy, 307 F.3d 1300 (11th Cir. 2002), the Court of Appeals for the Eleventh Circuit ruled that the Government could not use the NWF to pay for any of the damages that the utilities incur as a result of DOE's delay. The only other available funding source that has been identified to date is the Judgment Fund. We are also unaware of any statutory requirement that DOE be required to reimburse the Judgment Fund for judgments paid, unlike other statutory schemes that govern the adjudication of contract and other monetary disputes with the Government.

#### Litigation Costs

The costs to the Government to litigate these cases are significant. The Department of Justice has expended approximately \$29 million in attorney costs, \$111 million in expert funds, and \$52 million in litigation support costs in defense of these suits. In addition, DOE has expended many manhours to support this

effort. Absent settlement, these litigation costs will continue to be incurred into the foreseeable future, just as, until DOE begins SNF acceptance (or other suitable arrangement is made with the industry), the Government's underlying liability will continue to accrue.



1 I believe it's important to know how we got to where we are today,  
2 because it has led to the positions the organizations I represent currently  
3 hold.

4 By way of the Nuclear Waste Policy Act of 1982 (NWPA), the federal  
5 government became responsible for disposal of high-level radioactive waste  
6 - including spent or used nuclear fuel from commercial reactors. Utilities,  
7 ratepayers and regulators had the expectation from the NWPA that the  
8 Department of Energy (DOE) would begin initial waste acceptance and  
9 disposal in the properly licensed and constructed repository by January 31,  
10 1998, as the law and contracts signed with owners of spent fuel required.

11 Utility ratepayers have paid, and continue to pay, for the disposal  
12 costs of the material. To date, ratepayers in states that receive power from  
13 commercial nuclear utilities have paid over \$17 billion dollars into the  
14 Nuclear Waste Fund (NWF). Including allocated interest, the NWF today  
15 totals almost \$35 billion, but only a fraction of the money collected from  
16 ratepayers has actually been spent on developing the Yucca Mountain  
17 repository. The ratepayers in South Carolina have paid nearly \$1.3 billion  
18 into the NWF, or more than \$2.3 billion when interest is included.

19 State public utilities commissions, like mine, are one of the  
20 stakeholders on the disposition of used nuclear fuel from commercial

1 reactors because the fees paid to the Nuclear Waste Fund by the current  
2 caretakers of the used fuel, the electric utilities, are passed on to the  
3 ratepayers who are supplied with electricity from nuclear power generation.

4 When the Director of the Office of Civilian Radioactive Waste  
5 Management (OCRWM) within the Department of Energy (DOE) submitted  
6 the Yucca Mountain repository license application (LA) in June 2008 it was  
7 a comprehensive document. The 8,000-page document was the culmination  
8 of over 25 years of exhaustive investigation of the site.

9 Like others, I expected the NRC to conduct a rigorous review and  
10 conduct an open, fair and inclusive adjudicatory process. The filing of the  
11 license application was an important step, because it appeared to take the  
12 application out of the political arena and put it under a full-blown court  
13 review that would be based on science, not politics.

14 Since 1998, when DOE failed to meet its statutory and contractual  
15 obligation to begin waste acceptance for disposal, organizations that I and  
16 my state are a part of have simply asked that the government fulfill its part  
17 of the NWPA disposal bargain and remove the spent fuel per the Standard  
18 Contract since the utilities and ratepayers continue to pay for services not  
19 performed. That remains our position, as we believe that the license  
20 application shows that Yucca Mountain will meet the requirements of the

1 NWPA and regulations.

2        If Yucca Mountain cannot be licensed through the NRC process, or is  
3 licensed but not built, we interpret NWPA as still requiring DOE to develop  
4 and dispose of spent nuclear fuel in a geologic repository. Therefore, unless  
5 the law is repealed or amended to direct otherwise, Congress is the only  
6 body that can authorize DOE to conduct a site search for another suitable  
7 repository site.

8        This is particularly costly in most locations where the fuel pool  
9 cooling storage capacity at the reactor sites has long since been filled. In  
10 addition, the older fuel in the spent fuel pools is being removed and placed  
11 in concrete and steel containers - called dry casks - that are stored outside in  
12 concrete vaults.

13        More than 62,000 metric tons of uranium is currently stored in pools  
14 or dry cask storage at nuclear plant sites in the United States. This amount  
15 increases with each refueling cycle, which generally occurs about every 18  
16 months. License applications for at least 24 new nuclear units have been  
17 submitted to the Nuclear Regulatory Commission (NRC). The amount of  
18 spent nuclear fuel to be stored will increase as new units are constructed and  
19 old units are re-licensed, usually for an additional 20 years, as is happening  
20 with numerous reactors.

1            Nearly 3,800 metric tons of Uranium is stored at four nuclear plant  
2 sites in South Carolina, which are home to seven reactors. Two new nuclear  
3 units at the VC Summer Nuclear Station in Jenkinsville, SC have been  
4 approved by the South Carolina Public Service Commission and are  
5 awaiting license approval by the NRC. License applications for another two  
6 nuclear units near Gaffney, SC have been submitted to the NRC, but not to  
7 the South Carolina Public Service Commission.

8            This nation will need more base load electric generation as the  
9 population grows and the economy recovers. Some areas, such as the  
10 southeast in general and South Carolina in particular, need more base load  
11 generation in the near future. Renewable energy, conservation, and  
12 efficiency help to lessen the amount of base load generation needed, but  
13 cannot entirely eliminate that need. The climate and health impacts of  
14 burning coal have forced utilities to depend upon gas-fired and nuclear  
15 plants to meet the need for new base load generation. Without a solution to  
16 the storage of spent nuclear fuel, meaning a permanent repository, state  
17 regulators may be hesitant to approve the construction of new nuclear units  
18 and utilities may be hesitant to construct new nuclear units even if the NRC  
19 approves the license applications. Such circumstances could result in  
20 reduced electric reliability, brown outs, and increased cost of electricity as

1 gas-fired generation would be the only option and its price would increase as  
2 the demand for natural gas increases, all else being equal.

3 Federal courts have already ruled that the federal government is liable  
4 for the added storage costs past the dates agreed in original contracts with  
5 spent fuel utilities. The Department of Energy already faces at least \$1.5  
6 billion in court judgments and legal expenses resulting from failure to meet  
7 the government's obligations. In 2009 - when DOE had a plan to begin  
8 waste acceptance and disposal at Yucca Mountain by 2017 - DOE officials  
9 estimated that the liability for 65 cases could reach \$12.3 billion, growing  
10 further by at least \$500 million for each additional year of delay. DOE pays  
11 these court-determined liabilities from the Judgment Fund.

12 What is really happening is this – Because of the federal  
13 government's failure to construct a permanent repository, ratepayers are  
14 paying up to four times for ongoing spent fuel storage and future disposal –  
15 and that does not include decommissioning funds. First, ratepayers are  
16 paying into the NWF for storage at the deep geologic repository at Yucca  
17 Mountain; second, because of the initial delay, ratepayers have to pay  
18 through rates to expand and re-rack their existing cooling pools in order to  
19 accommodate more waste; third, ratepayers are continuing to pay through  
20 rates to keep the waste stored at the existing plant sites in dry cast storage;

1 and finally, all taxpayers – not just ratepayers – are paying through taxes for  
2 judgments and settlements through the Judgment Fund.

3 Not counting defense waste, over 62 thousand metric tones of spent  
4 fuel is stored in 72 operating and shutdown reactor sites in 34 States.  
5 Individuals or organizations opposed to nuclear power will raise questions,  
6 or even voice fears, over safety and security at some of these storage  
7 facilities. Although the utilities and the NRC contend that storage is safe and  
8 secure, it still costs ratepayers big money to implement individualized  
9 security programs for each of these locations around the country. As the  
10 Office of Homeland Security increases security requirements, the cost for  
11 security programs at the plant sites will increase.

12 How can this be more efficient, safe, secure or cost effective than  
13 having all spent nuclear fuel and defense waste at one secure, deep, geologic  
14 location?

15 Recently, there has been great interest in the reprocessing, or  
16 recycling as some call it, of spent nuclear fuel. The organizations I am a  
17 member of, including NARUC, have supported research into reprocessing  
18 and recycling and shares the view that, if there will be substantial global  
19 nuclear power expansion, there will probably come a time when uranium  
20 becomes more scarce and expensive and closing the fuel cycle will become

1 necessary.

2 No matter the future course of this country - whether we reprocess,  
3 recycle, or maintain the status quo - **a geologic repository is still going to**  
4 **be needed** for defense-related high-level radioactive waste that has already  
5 been reprocessed or cannot be reprocessed, and, the residue from any future  
6 reprocessing program for commercial spent nuclear fuel.

7 Finally, the states of Idaho and South Carolina, and maybe  
8 Washington, as well, have agreements with the federal government with a  
9 date certain to move defense waste out of their respective states. There are  
10 significant financial penalties to the federal government in the agreements  
11 for failure to comply – which is yet another way that all taxpayers, not just  
12 ratepayers, will have to pay compensation for the government's failure to  
13 build the site at Yucca Mountain.

14 Thank you for the opportunity to testify before you today. I look  
15 forward to your questions. I will also be happy to provide written answers to  
16 further questions, should you have any I am unable to answer today or for  
17 which you would like me to provide answers at a later date.

**Executive Committee Officers:**

**David Wright, Chairman**  
Vice Chairman, SC Public Service Commission

**Renze Hoeksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Chairman, MN Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

**Greg White, Communications**  
Commissioner, MI Public Service Commission

# NWSC

## Nuclear Waste Strategy Coalition

July 28, 2010

Letter sent by facsimile

The Honorable Richard A. Meserve  
Co-Chairman  
Blue Ribbon Commission  
Transportation and Storage Subcommittee  
1800 K Street, N.W., Suite 1014  
Washington, D.C. 20006

The Honorable Phil Sharp  
Co-Chairman  
Blue Ribbon Commission  
Transportation and Storage Subcommittee  
1800 K Street, N.W., Suite 1014  
Washington, D.C. 20006

Dear Commissioner Meserve and Representative Sharp:

The Nuclear Waste Strategy Coalition (NWSC) is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 49 organizations in 32 states. The NWSC was formed in 1993 out of frustration at the lack of progress the Department of Energy had made in developing a permanent repository for spent nuclear fuel (SNF) and high-level radioactive waste (HLRW), as well as Congress's failure to sufficiently fund the nuclear waste disposal program.

The NWSC believes that an effective disposal program should consist of a permanent repository; an integrated transportation plan; and centralized interim facilities that advance and complement the permanent repository while addressing near-term needs.

We are encouraged that the Blue Ribbon Commission Transportation and Storage Subcommittee, plans to tour and hold its first meeting at the Maine Yankee Atomic Power Independent Spent Fuel Storage Installation, Wiscasset, ME, on August 10, 2010. This is an opportunity for the Subcommittee to learn first-hand the issues decommissioned plants are faced with on a daily basis and the importance of removing SNF and HLRW currently stranded at decommissioned plant sites throughout this nation on an expedited basis.

The NWSC urges that the BRC recommend that federal government develop a plan to move and temporarily store SNF that is currently stranded at decommissioned reactor sites and operating reactor site(s) for consolidation at locations that volunteer to host SNF and HLRW storage facilities. In addition, we urge that the BRC recommend that the federal government also address the need for interim storage and disposal of greater-than-class-C waste.

Centralized interim storage facilities are a safe and cost-effective option for managing SNF and HLRW from decommissioned power plants and other facilities and should be authorized and funded for the near-term while a permanent facility is being licensed and constructed. However, centralized interim storage is not a substitute for a permanent repository and should be considered as a short-term solution only.

Letter to the Blue Ribbon Commission  
Page Two – July 28, 2010

In addition, operating nuclear power plants and decommissioned plants have already paid more than \$33 billion, including interest, into the Nuclear Waste Fund, for the removal of SNF and HLRW during this generation, and not to pass the problem on to future generations.

The members of the NWSC thank you for the opportunity to submit our input. We look forward to the opportunity to working with and providing further input to the Blue Ribbon Commission Transportation and Storage Subcommittee.

Respectfully yours,

A handwritten signature in black ink, appearing to read "D. Wright", written over a horizontal line.

David Wright  
Commissioner, South Carolina Public Service Commission, and  
Chairman, Nuclear Waste Strategy Coalition

C: Mr. Timothy A. Frazier, Blue Ribbon Commission, Department of Energy, Nuclear Energy.

**Executive Committee Officers:**

**David Wright, Chairman**  
Vice Chairman, SC Public Service Commission

**Renze Hoeksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Chairman, MN Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

**Greg White, Communications**  
Commissioner, MI Public Service Commission



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**For Immediate Release**

Wednesday, July 28, 2010

For More Information Contact:

Commissioner David Wright, Chairman, (803) 896-5180  
Martez Norris, Executive Director, (910) 295-6658

**DOE Misleads Inspector General About Yucca Mountain Shutdown Problems**

The Department of Energy's Inspector General (IG) has issued a report highlighting Department of Energy's (DOE) failure to conduct an orderly project shutdown of the Yucca Mountain Project. This is precisely the concern expressed by the Nuclear Waste Strategy Coalition (NWSC) in our March 4, 2010 letter sent to the IG warning about the loss of valuable information that would occur as a result of the hasty and unwarranted shutdown. The IG's report reveals that DOE misled the IG about the planned shutdown. First by informing the IG that the DOE was in the process of preparing a master plan for shutdown, which resulted in the IG's deferral of their audit of shutdown activities, and second when the DOE informed the IG that they had stopped work on the shutdown plan, even though the shutdown was proceeding at an accelerated pace. In the IG's recently issued report "*Need for Enhanced Surveillance During the Yucca Mountain Project Shut Down*," the IG concluded that the efforts taken "... did not, in our judgment, substitute for a master plan..." and that "... the Department needs to take special steps to ensure that the extraordinary documentary record of the Project be safeguarded for future use."

The DOE's actions to shut down Yucca Mountain are disappointing, but unfortunately not surprising. The termination of Yucca Mountain has been politically driven from the beginning, and we now discover that the political goal (shutdown by September 30, 2010) led the DOE to deceive its own IG and take shortcuts that will undoubtedly lead to the loss of critical information and further waste of ratepayer and taxpayer money. The DOE has spent over \$10 billion dollars of electric ratepayer's money over the past 30 years amassing an immense amount of data on Yucca Mountain and it is unconscionable that efforts are not being taken to preserve it.

The Nuclear Regulatory Commission Atomic Safety and Licensing Board recently ruled that DOE's unilateral action to shut down the Yucca Mountain Project violates federal law and multiple parties are in the process of suing the DOE over the shutdown. Given the current state of affairs, rather than accelerating the shutdown of Yucca Mountain, the government should be acting carefully and deliberately to ensure that the ratepayer and taxpayer investment in Yucca Mountain is preserved while these important legal matters are resolved.

Almost as disappointing as the shutdown of Yucca Mountain is the fact that the IG's office has chosen not to pursue their audit due to the aggressive timeline the DOE has set for also shutting down the Office of Civilian Radioactive Waste Management within the DOE. The NWSC believes that it is the IG's responsibility to pursue all avenues to ensure that the \$10 billion of scientific research, engineering work and technical data already spent is being safeguarded and managed in an efficient manner.

The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 49 member/affiliate organizations in 32 states, committed to reforming and adequately funding the U.S. civilian high-level nuclear waste transportation, storage, and disposal program.

###



U.S. Department of Energy  
Office of Inspector General  
Office of Audit Services

# Special Report

Need for Enhanced Surveillance  
During the Yucca Mountain Project  
Shut Down

OAS-SR-10-01

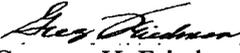
JULY 2010



**Department of Energy**  
Washington, DC 20585

July 21, 2010

MEMORANDUM FOR THE UNDER SECRETARY

FROM:   
Gregory H. Friedman  
Inspector General

SUBJECT: INFORMATION: "Need for Enhanced Surveillance During  
the Yucca Mountain Project Shut Down"

INTRODUCTION

The Nuclear Waste Policy Act Amendments of 1987 (Act) designated Yucca Mountain in Southwestern Nevada as the site for a national geologic repository for high-level nuclear waste, primarily the waste generated by U.S. commercial nuclear plants. The Department of Energy (Department) assigned management of the program to the Office of Civilian Nuclear Waste Management (OCRWM) and formally designated the project as the Yucca Mountain Project (Project).

By every measure, this was to have been one of the largest efforts of its kind ever undertaken. In fact, since 1987, the Department has spent in excess of \$10.5 billion in pursuing the Project. These funds have been used to:

1. Evaluate the suitability of the site as repository, on a science and engineering basis;
2. Make major real property infrastructure improvements at the site, including tunneling through the mountain and constructing buildings for office and ancillary purposes;
3. Purchase significant quantities of personal property (computers, office furniture, etc.) to carry out ongoing operations; and,
4. Develop and accumulate massive amounts of scientific and technical data concerning the Project and a variety of related issues.

In accordance with the Act, the Project has been funded primarily by a rate premium charged to those customers of public utilities who relied on nuclear power for electricity generation. Federal funding has supported aspects of the Project, but to a much lesser degree.

On June 3, 2008, the Department filed a license application with the Nuclear Regulatory Commission (NRC) to begin construction of the repository.

## **PROJECT TERMINATION**

In early 2009, the Department indicated that it intended to terminate the Project. As memorialized in the Fiscal Year (FY) 2011 budget request, the Department has sought to have virtually all funding for the Project eliminated and, in March 2010, moved to withdraw the NRC license application, with prejudice. Pending approval, the Department is moving to shut down all activities at the Yucca Mountain site by September 30, 2010.

Although the Office of Inspector General (OIG) takes no position regarding the policy judgment to terminate the Project, we have been and remain concerned that any shut down be consummated in a way that protects the national interest, including the interests of the ratepayers and taxpayers who financed the Project. Other than the termination of the Department's Superconducting, Super Colliding Project in Texas in 1998, we know of no comparable single project termination in the Department's recent history as consequential as Yucca Mountain, given the importance of its intended mission, the massive investment in real and personal property and the development and compilation of huge quantities of Project-related, intellectual property.

On February 23, 2010, the OIG announced an audit to determine whether OCRWM had adequately planned for the Project's orderly shut down. On March 2, 2010, management informed us that it was in the process of preparing a master plan to manage the shut down process and that it would be completed by the end of March 2010. As described to us at the time, the master plan would have addressed many of the topics proposed for our audit. Management requested that the OIG defer its audit until the plan was completed.

We evaluated this request and, based on the circumstances, agreed to defer the audit until completion of the plan. However, given the importance of this matter, it was our intent to restart the audit once the plan was formulated. To that end, we monitored the progress of various judicial challenges to the license application withdrawal, including a court-imposed one month stay in shut down activities. On June 12, 2010, we met with OCRWM officials to determine the status of shut down planning in anticipation of restarting our audit. We were told that the plan was not complete and that events were moving so quickly that no further action on the master plan was contemplated. Instead, management described its strategy for meeting the September 2010 Project shut down date, essentially concentrating on various functional activities at the Project.

The Office of Inspector General issued a draft of this report for comment by Department management. Management responded on July 19, 2010, providing details on its commitment to close down the Project in a responsible and orderly manner. These comments, which are an integral part of this report, are provided in their entirety in the attachment.

## **SHUT DOWN OVERSIGHT**

In our view, and as OCRWM officials readily acknowledged, the development, implementation and execution of an approved master plan or the equivalent for the shut down of Yucca Mountain, specifically, one that addressed the key issues in an analytical, coordinated and integrated manner would have been the preferred course of action given the magnitude of the

Project. Further, as virtually all parties recognized, such a planning framework would have increased the likelihood of overall success of the effort. OCRWM officials told us that shut down events had surpassed the planning initiative timeline and that the closing process was being expedited to meet the scheduled completion date of September 30, 2010. To help compensate for the lack of a master plan, OCRWM officials informed us that they had established focus groups to manage shut down activities organized along functional lines: contracts; records, including the Licensing Support Network; information technology; human relations; facilities and property; security; and, science. OCRWM officials also described the assistance being provided by Departmental organizations including the Office of General Counsel and the Office of Legacy Management. Taken together, these efforts were significant; although they did not, in our judgment, substitute for a master plan. Nonetheless, given the sequence of events and the timeline for shut down completion, we have decided not to restart our audit.

### **LESSONS LEARNED**

In recent years, the OIG has been involved in a number of Departmental actions with attributes and characteristics similar to those that will be encountered during the Yucca Mountain shut down. In the interest of helping to assure an orderly Project termination, we are providing the Department's decision-makers with several of the most important lessons learned from these events.

#### **Disposition of Personal Property**

The Project's inventory included approximately \$6 million in personal property as of September 30, 2009. The Department is in the process of excessing or disposing of this inventory. Over time, the Department has experienced a number of instances in which both real and personal property were disposed of uneconomically or inefficiently. For example, the OIG reported in our audit report on "Property Disposals at the Yucca Mountain Project" (DOE/IG-0664, September 27, 2004) that the Project disposed of approximately 9,000 metric tons of property and the Government received no economic benefit from potentially reusable property.

Further, we have reported extensively on situations in which computers have been excessed without taking the steps necessary to ensure that hard drives have been sanitized to prevent the transfer of sensitive and/or personally identifiable data to new users. For example, we reported on the lack of controls over the proper clearing, sanitization, and destruction of memory devices (*Excessing of Computers Used for Unclassified Controlled Information at Lawrence Livermore National Laboratory*, DOE/IG-0759, March 2007; and, *Internal Controls for Excessing and Surplusing Unclassified Computers at Los Alamos National Laboratory*, DOE/IG-0734, July 2006). As noted in these reports, the Department has specific policies on how this is to be accomplished. As a preventative measure, it is important that OCRWM fully employ the appropriate computer disposition procedures.

The aggressive timeline for shut down of the Project makes it essential that the disposal of personal property be managed with care to minimize the inherent vulnerabilities associated with such an effort.

## **Maintaining Intellectual, Scientific and Technology Property**

Since its inception, OCRWM has spent tens of millions of dollars on a wide variety of scientific and engineering studies, analyses, evaluations and reviews. These have addressed site characterization, topography, rock formation and water issues at Yucca Mountain itself, as well as related Project activities. Preservation of this information in a useful form may be critically important as the Department seeks the best path forward for resolving the U.S. nuclear waste disposition issue, a recognized challenge of major significance. We were told that the Department has proposed retaining data in the Licensing Support Network (which is the information system designed to compile data in support of the NRC licensing effort) for 100 years and core samples from characterization efforts for 25 years. While a formal system was in place to retain much of the information (specifically, the Licensing Support Network), we have identified past issues with the management of electronic and other records of which officials should be mindful. For example, we found that the Department had not developed methods for archiving e-mail and other electronic information and in planning for the schedule and disposition of records (*The Retention and Management of the Department's Records*, DOE/IG-0685, April 2005). This report, and our ongoing follow-up work in this same area, suggest that the Department needs to take special steps to ensure that the extraordinary documentary record of the Project be safeguarded for future use.

## **Prime Contractor and Subcontractor Management**

The Project's management structure included a number of Federal personnel both in Washington and in Nevada. Consistent with the Department's general approach to mission activities, project effort has largely been the work of a significant number of contractors and subcontractors. Even in the normal course of government business, it is imperative that contracts and subcontracts be closed out in an analytical, thoughtful way to protect the interests of U.S. taxpayers. This includes the appropriate resolution of any contractor-incurred questioned or unallowed costs. In a situation such as the shut down of Yucca Mountain, where over \$10 billion has been spent and the process is proceeding on an expedited basis, employing a thorough, comprehensive and complete contract close out process takes on greater importance than normal. Related to this concern, the OIG will shortly issue a separate report on questioned Project contractor-incurred costs. These include:

- \$100 million in costs claimed by Bechtel SAIC, the former management and operating contractor for the Project, during FY 2001 through 2009. These costs were previously questioned during audits by internal auditors and the Defense Contract Audit Agency but have not been resolved by OCRWM; and,
- \$75 million in subcontract costs during FY 2004 through 2009 for which there is no evidence that Bechtel SAIC ever requested an audit of the incurred costs to determine allowability.

With at least \$175 million in costs to be resolved, the Department needs to ensure that the close out process is managed effectively and that all disallowed costs are settled and funds recouped; the remaining required audits of costs incurred are completed; and, that all excess funds are de-

obligated. As we have reported in the past, delays in the timely contract close out increase the risk that contractors and subcontractors will be unable to produce documentation to support previously submitted incurred cost claims. In a separate report to OCRWM management, the OIG is making specific recommendations for the resolution of the current issues at Yucca Mountain.

### **Contractor Employee Benefit Administration**

The Department needs to exercise effective oversight of the administration of contractor employee pensions and post retirement health benefits associated with the Project. As of September 30, 2009, the Department's accumulated benefit obligation for Yucca Mountain employee pensions and post retirement health benefits was estimated at approximately \$20.1 million. Given the Department's significant overall unfunded liability for pensions and health benefits (most recently estimated at \$24.6 billion) and the negative impact contributions to those plans can have on operational tempo, the settlement with the Yucca Mountain contractors regarding pension and health benefits obligations needs intense scrutiny by OCRWM management.

Further, with regard to the general question of contractor employee benefits, at other Departmental sites, the OIG has raised recent concerns about the propriety of the severance payments made to contractor personnel and the consistency in the amounts of severance pay available to separated employees (*Contractor Severance Plans at the Department of Energy*, OAS-L-09-04, February 12, 2009) whose service at Departmental facilities or sites was no longer needed. Based on this experience, to the extent that the severance payments are utilized as the Project is terminating, the Department needs to ensure that such payments to separating contractor employees are consistent with existing contract provisions.

### **PATH FORWARD**

The Department has taken a number of actions designed to bring the Project to closure. However, given the lack of an approved master plan to manage this process and the press of a very ambitious shut down schedule, special attention by senior level Department management will be necessary if the process is to be an orderly one. Although no recommendations are being made, we are hopeful that the consideration of reported past experiences will be helpful as this process moves forward.

cc: Assistant Secretary for Nuclear Energy  
Chief of Staff  
Acting Director, Office of Civilian Radioactive Waste Management  
Director, Office of Legacy Management  
Manager, Oak Ridge Office

Attachment



**Department of Energy**  
Washington, DC 20585

July 19, 2010

**MEMORANDUM FOR GREG FRIEDMAN**  
**INSPECTOR GENERAL**

**FROM: OFFICE OF CIVILIAN RADIOACTIVE WASTE**  
**MANAGEMENT**

**SUBJECT: Management Comments on Draft Office of Inspector**  
**General Report on the Need for Enhanced Surveillance**  
**During the Yucca Mountain Project Shut Down**

The Department of Energy (DOE) appreciates the Office of Inspector General's (OIG) review of the Yucca Mountain Project shut down activities. The Department is committed to closing down the Program in a responsible and orderly manner, and has undertaken a significant effort to achieve this goal. The Office of Civilian Radioactive Waste Management (OCRWM) has been closely collaborating with relevant offices throughout the Department to ensure that scientific and Program records are appropriately preserved and maintained, and that all project property and contract requirements are properly disposed of prior to the closure of OCRWM. As the report notes, OCRWM has developed working groups organized around functional areas that are based on the draft master plan. The Department believes that it has maintained a strong and coordinated focus during the shut down process, ensuring that the records, property, and contracts are appropriately addressed, and personnel are provided the resources they need. Responses to the specific areas mentioned in the OIG report are discussed below.

**Disposition of Personal Property:**

OCRWM is focused on disposing all excess property, both real and personal, in accordance with current DOE orders and good business practices. We have successfully transferred property to other DOE sites and organizations, including the transfer of equipment, desks, cubicles, printers, supplies, and other office items from more than 900 offices at the Yucca Mountain location to the Hanford site, saving Hanford over \$2 million in acquisition costs. The Yucca Mountain project also successfully transferred equipment to the Nevada Site Office, the WIPP site in Carlsbad, the Tonopah Test Range, and several other DOE sites and Federal agencies. Some capital equipment items with remaining residual value were re-stocked to the original vendors or transferred to other DOE sites, with any recovered funds returned to the Nuclear Waste Fund, in accordance with Chapter 19 of the DOE Accounting Handbook. Surplus emergency vehicles have also been transferred to Nye County. For real property, facility leases are being terminated as expeditiously as possible, including facilities in Las Vegas and Washington, D.C. Site facilities have been shut down and are awaiting transfer of ownership to a successor program in DOE.

OCRWM is aware of, and takes seriously, the requirement to ensure that excess computer hard drives are sanitized to prevent the transfer of sensitive and/or personally identifiable information to new users. Other than the systems that will be transferred to the Office of Legacy



Printed with 50% or more recycled paper

Management with the data intact, OCRWM is and will continue to comply with the sanitization requirement, including sanitizing other devices such as network printers and copiers. Computers, printers and other electronic devices are being transferred to other DOE programs that need them. The remaining excess computers and associated equipment, after they have been sanitized, are being donated to Nevada county schools (Clark, Nye and Lincoln counties) under the Computers for Learning program.

**Maintaining Intellectual, Scientific, and Technology Property**

The Department will take all necessary actions to preserve the scientific record developed during the Yucca Mountain project. The Program has provided written direction to all participants to ensure that all records are properly archived and maintained. And, the Program has initiated discussions with the Nuclear Waste Technical Review Board to solicit the Board's assistance in helping the Department ensure that these records are maintained. We are committed to maintaining key intellectual, scientific, and technology property, and have developed plans to transition the management and maintenance of the License Support Network and other records to the Office of Legacy Management (OLM).

**Prime Contractor and Subcontractor Management**

OCRWM is in the process of reviewing the subcontracts that the OIG identified as requiring an audit. OCRWM will request an appropriate audit for those subcontracts that it determines require an incurred cost audit or a close-out audit. OCRWM is also in the process of reviewing other costs identified in the report and the Contracting Officer will make a determination of allowability for those costs. For unallowable costs, we plan to send a Contracting Officer determination letter to Bechtel requesting reimbursement of those costs.

**Contractor Employee Benefits Administration**

OCRWM is working with the Office of Management, the Office of Legacy Management, and the Office of General Counsel to determine the best approach to address Yucca Mountain employee pensions and post retirement health benefits and will ensure that the Department meets its obligations. Further, OCRWM is ensuring that contractor severance payments are being made consistent with existing contract provisions.

Contrary to the \$37M accumulated benefit obligation (ABO) number for Yucca Mountain cited on page 5 of the OIG report, our records indicate (FY09 FAS87 and FAS106 financial reports) a pension ABO of \$17.1M and a post-retirement medical ABO of \$3M (\$20.1M combined). Similarly, for the entire Department, our records indicate an unfunded pension liability of \$12.7B and an unfunded post-retirement medical liability of \$11.9B (\$24.6B combined).

We appreciate this opportunity to comment on the draft report and remain available to discuss these issues further.

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3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report which would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

Name \_\_\_\_\_ Date \_\_\_\_\_

Telephone \_\_\_\_\_ Organization \_\_\_\_\_

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If you wish to discuss this report or your comments with a staff member of the Office of Inspector General, please contact Felicia Jones at (202) 253-2162.

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Your comments would be appreciated and can be provided on the Customer Response Form.

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 10-1050**

**September Term 2009**

**DOE-Yucca Mtn  
NRC-63-001**

**Filed On: July 28, 2010**

In re: Aiken County,  
Petitioner

-----  
Consolidated with 10-1052, 10-1069, 10-1082

**BEFORE:** Garland and Kavanaugh, *Circuit Judges*, and Williams, *Senior Circuit Judge*

**ORDER**

Upon consideration of respondents' motion to vacate briefing and oral argument schedule and hold case in abeyance, and the response and reply thereto, it is

**ORDERED** that the motion be granted. These cases are removed from the September 23, 2010 oral argument calendar and the briefing schedule established by this court's order is vacated. It is

**FURTHER ORDERED** that these cases be held in abeyance pending further proceedings before the respondent agency consistent with the motion. The parties are directed to file status reports at 30-day intervals beginning 30 days from the date of this order. The parties are further directed to file motions to govern future proceedings within 10 days from respondent agency's final decision in its pending review of the Licensing Board's June 29, 2010 decision.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Cheri Carter  
Deputy Clerk



U.S. Department of Energy  
Office of Inspector General  
Office of Audit Services

# Special Report

Resolution of Questioned, Unresolved  
and Potentially Unallowable Costs  
Incurred in Support of the Yucca  
Mountain Project

OAS-SR-10-02



Department of Energy  
Washington, DC 20585

July 29, 2010

MEMORANDUM FOR THE UNDER SECRETARY OF ENERGY

FROM:

  
Gregory H. Friedman  
Inspector General

SUBJECT:

INFORMATION: "Resolution of Questioned, Unresolved and Potentially Unallowable Costs Incurred in Support of the Yucca Mountain Project"

INTRODUCTION

The Nuclear Waste Policy Act Amendments of 1987 designated Yucca Mountain in Southwestern Nevada as the site for a national geologic repository for high-level nuclear waste. The Department of Energy assigned management of the program to the Office of Civilian Nuclear Waste Management (OCRWM). Bechtel SAIC Company, LLC (BSC) was the management and operating contractor for OCRWM's Yucca Mountain Project from April 1, 2001, until its contract with the Department ended on March 31, 2009. In early 2009, the Department indicated that it intended to terminate the Project and is moving to shut down all activities by September 30, 2010.

In recognition of the very ambitious schedule for shutting down the Project, the Office of Inspector General (OIG) issued a report on the "*Need for Enhanced Surveillance During the Yucca Mountain Project Shut Down*" (OAS-SR-10-01, July 21, 2010). In that report, we identified lessons learned from a number of previous Department activities with attributes and characteristics similar to those that would be encountered during the Yucca Mountain Project shut down. One key point in that report related to protecting the interest of the ratepayers and taxpayers by employing a robust contract close out process. We indicated that the OIG would be issuing a separate report questioning Project contractor-incurred costs that the Department needs to address during the contract close-out process to ensure that disallowed costs are settled and funds recouped; required audits of costs incurred are completed; and, that all excess funds are de-obligated.

Today, we issued a separate contract audit report on "*Audit Coverage of Cost Allowability for Bechtel SAIC Company LLC During Fiscal Years 2004 Through 2009 Under Department of Energy Contract No. DE-AC28-01-RW12101*" (OAS-V-10-15, July 2010). This report identified specific costs questioned in the contract audit report that will need to be resolved as part of the Yucca Mountain Project shut down and contract close-out.

QUESTIONED or UNRESOLVED COSTS

We identified over \$175 million in questioned and unresolved costs claimed by BSC during Fiscal Years (FY) 2001 through 2009. Specifically,

- \$19,024,410 in questioned costs that had been identified in audits and reviews and had not been resolved; and,
- \$159,955,538 in subcontract costs that we consider to be unresolved because necessary audits had not been requested or performed.

#### Questioned Costs

The Department has not resolved \$18,793,992 in costs questioned by BSC's own internal audit function. These costs, some of which were discovered as early as 2002, include:

- Subcontract costs totaling \$340,000 for unsupported costs, time charged while traveling, unallowable per diem expenses and mathematical errors discussed in the FY 2002 Allowable Cost Audit;
- Subcontract costs totaling \$84,680 for unsupported labor charges and travel expenses identified during the FY 2003 Allowable Cost Audit;
- A total of \$762,000 in subcontract costs identified by BSC Internal Auditors in their FY 2004 Allowable Cost Audit. Specifically, the amount questioned included \$749,000 for subcontract costs that did not have supporting documentation, and \$13,000 for unsupported time charged by subcontractor employees while traveling;
- Unsupported labor and travel costs, calculation errors and double billing totaling \$1,337,754 questioned in the FY 2005 Allowable Cost Audit;
- Unsupported labor and travel costs, payment errors for rent and furniture and duplicate billings of \$310,500 identified in the FY 2006 Allowable Cost Audit;
- Unsupported labor and travel costs and time charged while traveling totaling \$13,500 identified in the FY 2007 Allowable Cost Audit;
- Payments without supporting documentation and unsupported labor charges totaling \$6,027 questioned in the FY 2008 Allowable Cost Audit; and,
- \$15,939,531 in unsupported costs identified in the FY 2009 Allowable Cost Audit that included payments to Department of Energy national laboratories, BSC's parent company, and an array of suppliers and vendors; unsupported relocation costs; automobile lease payments due to types of vehicles leased; undocumented rates used for calculation of relocation income tax allowances; shipment and storage costs of household goods in excess of the allowable amount; and, costs of an employee's apartment lease cancellation fee.

Based on testing performed by the OIG during the current audit, we identified and questioned an additional \$207,207 in subcontract costs, \$14,185 in relocation costs and \$35,652 in costs which BSC failed to recover from two employees who were not entitled to relocation benefits since

they failed to remain employed for the required period of time. These additional costs will also need to be resolved during the contract close-out process.

#### Unresolved Subcontractor Costs

BSC had neither audited nor arranged for audit of nearly \$160 million in subcontractor costs that remain unresolved until audited. BSC was required by its contract with the Department to either conduct an audit of subcontractor costs or arrange for such an audit to be performed by the cognizant government audit agency.

Finally, we identified at least 23 subcontracts for FYs 2004 through 2009 for which we could not obtain evidence that BSC had requested DCAA audits through the Department's OCRWM contracting officer. There also was no documentation to show that BSC had requested audits of the direct and indirect rates charged on two subcontracts for FY 2004, FY 2005 or FY 2006. Therefore, we reported subcontractor costs totaling \$77,367,089 as unresolved costs pending audit.

#### Continuing Concerns/Path Forward

Our concern with contractor/subcontractor incurred costs issues at OCRWM is not new. In a 2005 OIG audit report on *Assessment of Changes to the Internal Control Structure and their Impact of the Allowability of Cost claimed by and Reimbursed to Bechtel SAIC Company, LLC* (OAS-V-05-03, January 2005), we questioned subcontractor costs totaling \$95,552,645 that had not been audited. Of the total amount questioned, \$82,588,449 had not been resolved. As we understand it, the OCRWM contracting officer is waiting for the Defense Contract Audit Agency (DCAA) to complete three audit reports and for BSC to provide additional information before determining the allowability of the remaining questioned costs. We reported the \$82,588,449 as unresolved costs pending audit.

As noted, when aggregated, we identified over \$175 million in questioned and unresolved costs claimed by BSC from 2001 through 2009. A summary breakdown of these costs is presented in Attachment 1 of this report. In our contract audit report on costs incurred by BSC from FY 2004 through 2009, we recommended that the Acting Principal Deputy Director, Office of Civilian Radioactive Waste Management, direct the Contracting Officer to take action to resolve these costs by:

1. Ensuring that subcontractor costs were audited as required in the contract; and,
2. Making determinations regarding the allowability of questioned costs identified in this report and recover those costs determined to be unallowable.

Management concurred with the recommendations in the report but could not provide an estimated closure date for the corrective actions since it is contingent upon DCAA's audit response time. In connection with our 2010 audit, OCRWM indicated that it is in the process of reviewing the:

- Subcontracts which the OIG identified as requiring an audit. OCRWM committed to requesting the appropriate audit for those subcontracts for which it determines an incurred cost audit or close-out audit is required.
- Questioned costs identified in the report in order for the Contracting Officer to make a determination of allowability for those costs. OCRWM indicated that, for those costs that are determined to be unallowable, a Contracting Officer determination letter will be sent to BSC requesting reimbursement for those costs.

Management's comments are attached.

The Department has placed closure of the Office of Civilian Radioactive Waste Management on an expedited fast track. As such, we request that management inform us as to the program element and management official to be charged with resolving the issues identified in this report.

cc: Chief of Staff

Acting Principal Deputy Director, Office of Civilian Radioactive Waste Management  
Director, Office of Legacy Management  
Manager, Oak Ridge Office

Attachments

**Summary of Questioned Costs and Unresolved Subcontract Costs Pending  
Audit**

**Bechtel SAIC Company, LLC  
Contract No. DE-AC28-01RW12101  
October 1, 2000 through March 31, 2009**

	FY 2001-2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Total
Relocation Costs		\$4,263	\$1,212		\$35,652	\$5,367	\$3,343	\$49,837
Subcontract Costs		1,404	11,328	62,289			132,186	207,207
Unresolved Costs <sup>1</sup>	\$424,680 <sup>2</sup>	762,000	1,337,754	310,500	13,500	6,027	15,939,531	18,793,992
Errors <sup>3</sup>			(6,346)	(20,280)				(26,626)
<b>Total Questioned Costs after Adjustments for Errors</b>	<b><u>\$424,680</u></b>	<b><u>\$767,667</u></b>	<b><u>\$1,343,948</u></b>	<b><u>\$352,509</u></b>	<b><u>\$49,152</u></b>	<b><u>\$11,394</u></b>	<b><u>\$16,075.0</u></b>	<b><u>\$19,024,410</u></b>
<b>Unresolved Subcontract Costs Pending Audit</b>	<b>\$82,588,449</b>	<b>\$20,884,651</b>	<b>\$16,901,161</b>	<b>\$19,575,313</b>	<b>\$14,939,404</b>	<b>\$4,049,119</b>	<b>\$1,017,441</b>	<b>\$159,955,538</b>

<sup>1</sup> Unresolved costs include costs questioned by Internal Audit in prior audits but have not been resolved.

<sup>2</sup> These costs were questioned by Internal Audit prior to the scope of our audit but remained unresolved.

<sup>3</sup> Errors are understatement (overstatement) of costs questioned by Internal Audit.



**Department of Energy**  
Washington, DC 20585

June 1, 2010

**MEMORANDUM FOR** DAVID SEDILLO, DIRECTOR  
NNSA AND SCIENCE AUDITS DIVISION  
OFFICE OF INSPECTOR GENERAL

**FROM:** DAVID K. ZABRANSKY  
ACTING PRINCIPAL DEPUTY DIRECTOR  
OFFICE OF CIVILIAN RADIOACTIVE  
WASTE MANAGEMENT

**SUBJECT:** Comments on Inspector General Draft Report on "Audit Coverage of Cost Allowability for Bechtel SAIC Company, LLC During Fiscal Years 2004 through 2009 Under Contract No. DE-AC28-01RW12101"

The purpose of this memorandum is to provide the Office of Civilian Radioactive Waste Management's response to the identified recommendations in the subject draft report.

We appreciate the opportunity to comment on the draft report. If you have any questions, please contact Kenneth Powers of my staff at 702-794-1301.

**Attachment:**  
Responses to Recommendations



**Responses to Recommendations in Draft Audit Report  
“Audit Coverage of Cost Allowability for Bechtel SAIC Company, LLC During  
Fiscal Years 2004 through 2009 Under Contract No. DE-AC28-01RW12101”**

**RECOMMENDATIONS**

We recommend the Acting Principal Deputy Director, Office of Civilian Radioactive Waste Management, direct the Contracting Officer to:

**RECOMMENDATION 1**

Ensure that subcontractor costs are audited as required in the contract.

**MANAGEMENT DECISION**

Concur. The Office of Civilian Radioactive Waste Management (OCRWM) is in the process of reviewing those subcontracts for which the Office of Inspector General identified as requiring an audit. For those subcontracts for which OCRWM determines an incurred cost audit or close-out audit is required, then OCRWM will request the appropriate audit.

Estimated date of closure: Contingent upon the Defense Contract Audit Agencies' (DCAA) response time.

**RECOMMENDATION 2**

Make determinations regarding the allowability of questioned costs identified in this report and recover those costs determined to be unallowable.

**MANAGEMENT DECISION**

Concur. The Office of Civilian Radioactive Waste Management is in the process of reviewing the questioned costs identified in the report in order for the Contracting Officer to make a determination of allowability for those costs. For those costs that are determined to be unallowable, a Contracting Officer determination letter will be sent to Bechtel requesting reimbursement of those costs.

Estimated date of closure: Contingent upon receipt of DCAA audit response.

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3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
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