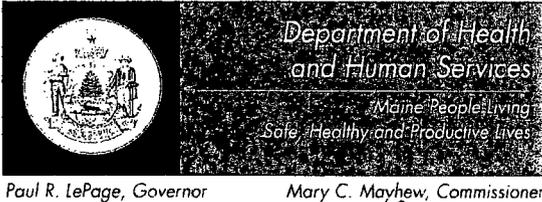


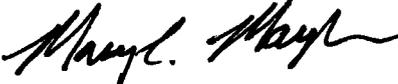
Department of Health and Human Services
 Commissioner's Office
 221 State Street
 11 State House Station
 Augusta, Maine 04333-0011
 Tel. (207) 287-3707
 Fax (207) 287-3005; TTY (800) 606-0215



May 17, 2011

MEMORANDUM

TO: Senator Kevin Raye, President of the Senate, and Representative Robert Nutting, Speaker of the House

FROM: Mary Mayhew, Commissioner 
 Department of Health and Human Services

SUBJECT: State Nuclear Safety Inspector's January through March 2011 Monthly Reports to the Legislature on the Interim Spent Fuel Storage Facility in Wiscasset, Maine

Legislation enacted in the spring of 2008 requires the State Nuclear Safety Inspector to provide monthly reports to the President of the Senate, Speaker of the House, the U.S. Nuclear Regulatory Commission, and Maine Yankee. The reports focus on activities at the site and include highlights of the national debate on storing and disposing the used nuclear fuel. Competing work deadlines has prevented the State Nuclear Safety Inspector from getting some of these reports submitted on time. With the submission of the March report all the reports are now current.

The enclosed report provides the information required under Title 22 of the Maine Revised Statutes Annotated §666, as enacted under Public Law, Chapter 539, in the second regular session of the 123rd Legislature.

Should you have questions about its content, please feel free to contact Mr. Patrick J. Dostie, State Nuclear Safety Inspector, at 287-6721.

pjd

Enclosures

cc: Vonna Ordaz, U.S. Nuclear Regulatory Commission
 Nancy McNamara, U.S. Nuclear Regulatory Commission, Region I
 James Connell, Site Vice President, Maine Yankee
 Senior Policy Advisor, Governor's Office
 Jennifer Duddy, Sr. Director of Legislative and Public Relations, Dept. of Health and Human Services
 Dr. Sheila Pinette, Director, Maine Center for Disease Control and Prevention
 James Brooks, Acting Commissioner, Department of Environmental Protection
 Richard Davies, Maine Public Advocate
 Lt. Christopher Grotton, Special Services Unit, Maine State Police
 Nancy Beardsley, Director, Division of Environmental Health
 Jay Hyland, PE, Manager, Radiation Control Program

MMSS26



Maine Center for Disease
Control and Prevention

An Office of the
Department of Health and Human Services

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Maine Center for Disease Control and Prevention
286 Water Street
11 State House Station
Augusta, Maine 04333-0011
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April 22, 2011

To: Honorable Mr. Kevin L. Raye, President of the Senate
Honorable Mr. Robert W. Nutting, Speaker of the House

Subject: State Nuclear Safety Inspector Office's January through March 2011 Monthly Reports 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 123rd 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 January through March 2011 monthly activities reports. The submission of these reports was temporarily delayed due to other competing work. Future reports will be submitted in a timely manner as they were consistently provided on a monthly basis prior to this recent departure. The major highlights for the reports locally are: Maine Yankee submitted its fifth and final Radiological Groundwater Monitoring Report, the preliminary working draft of the Confirmatory Summary Report detailing the State's decommissioning findings is complete and under review, and Maine Yankee's 2010 Decommissioning Funding Assurance Status Report shows a gain of \$2.4 million over last year for a fund balance of \$98.1 million and a decrease in projected costs of \$9.7 million for a total of \$110.2 million out to 2023.

The national highlights for the first quarter include:

January

- The U.S. Court of Appeals set March 22nd for litigation over the Yucca Mountain Project.

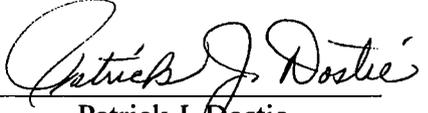
February

- The states of Connecticut, New York, and Vermont file a lawsuit with the U.S. Court of Appeals for the DC Circuit against the Nuclear Regulatory Commission's (NRC) Waste Confidence and Temporary Storage Rules for spent nuclear fuel.
- Other environmental groups, like the Natural Resources Defense Council, follow the states' lead and file suit over the same NRC rules.
- The Department of Energy (DOE) issues a draft Environmental Impact Statement for the disposal of Greater-Than-Class C (GTCC) low-level radioactive waste. The nuclear industry has always operated under the pretext that GTCC is a form of high-level waste that will also be buried at Yucca Mountain. The fact that DOE is signaling this waste stream as a form of low-level waste is disturbing as Maine Yankee has four concrete casks with GTCC wastes from the cut-up of the reactor internals at their storage installation in Wiscasset.

March

- The National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute and 16 of its member utilities across the country filed lawsuits in the DC Circuit Court of Appeals to suspend the surcharge on ratepayers.
- The Blue Ribbon Commission on America's Nuclear Future publishes its first report emphasizing the seven key themes from all the public meetings it has held throughout the continental U.S and abroad. They include governance, fees, siting, reactor and fuel technologies, transportation, storage, and disposal.
- The U.S. Court of Appeals hears oral arguments over the Yucca Mountain Project.
- The congressional interchange between the House Committees on Energy and Commerce, and Science, Space and Technology, with the Nuclear Regulatory Commission's Chairman, Dr. Jaczko, and Energy Secretary Chu on the Administration's termination of Yucca Mountain results in an investigation into the halting of the Yucca Mountain Program.
- Five of the nine counties in Nevada support the Yucca Mountain Project, especially Nye County in which Yucca Mountain is located.

Please note that the reports will not feature the glossary and the historical addendum as in previous years. 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 the reports' contents, please feel free to contact me at 207-287-6721, or e-mail me at pat.dostie@maine.gov.


Patrick J. Dostie
State Nuclear Safety Inspector

Enclosures

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. Mary Mayhew, Commissioner, Department of Health and Human Services
Ms. Jennifer Duddy, Senior Director of Legislative and Public Relations, Depart. of Health and Human Services
Dr. Sheila Pinette, Director, Maine Center for Disease Control and Prevention
Senior Policy Advisor, Governor's Office
Mr. James Brooks, Acting Commissioner, Department of Environmental Protection
Mr. Richard Davies, Maine Public Advocate
Lt. Christopher Grotton, Special Services Unit, Maine State Police
Ms. Nancy Beardsley, Director, Division of Environmental Health
Mr. Jay Hyland, PE, Manager, Radiation Control Program

State Nuclear Safety Inspector Office

January 2011 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 123rd 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 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 are no longer included in the report. Instead, this information is available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and may redirect the reviewer to the website:

Independent Spent Fuel Storage Installation (ISFSI)

During January the general status of the ISFSI was normal. However, there were three snowstorms that required the implementation of additional measures that were terminated after the snowstorms. There were no instances of spurious alarms due to environmental conditions.

There were no fire or security related impairments in January. There were, however, 30 security events logged for the month. Twenty-eight of the log entries were for transient environmental issues. The other two dealt with equipment failures which were repaired the same day.

There were 11 condition reports¹ (CR) for the month of January and they are described below.

- 1st CR: Documented a missed source leak test. The test was satisfactorily performed the day after discovery.
- 2nd CR: Documented previous cask inspection observations in order to track the observations through the facility's formal CR process.
- 3rd CR: Was written to document a door closer leaking fluid.
- 4th CR: Documented equipment damage during snow removal. The damaged equipment was replaced the same day.
- 5th CR: Involved an equipment malfunction. The defective equipment was replaced the same day.
- 6th CR: Documented the intermittent operation of a door lock. The lock was repaired.
- 7th CR: Documented the minor damage to a pull box cover locking bar on a man-cover during snow removal. The bar was removed, repaired and returned to the man-cover.
- 8th CR: Was written to track observations associated with a condition report trend evaluation.

¹ 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.

- 9th CR: Documented the use of an out of revision procedure attachment. The attachment was updated.
- 10th CR: Was written to track observations associated with a review of the Training and Qualification Plan.
- 11th CR: Was written to track observations associated with a review of the Preventative Maintenance Program.

Other ISFSI Related Activities

1. On January 14th the Nuclear Regulatory Commission (NRC) issued a letter to Maine Yankee stating that they had accepted Maine Yankee's response to their August 2nd letter on the applicability of the revised security rule to the ISFSI. The NRC Staff will perform a detailed evaluation of Maine Yankee's response.
2. On January 24th Maine Yankee submitted to the Nuclear Regulatory Commission revision 23 of its Defueled Safety Analysis Report (DSAR). The revision also fulfills the biennial update for the DSAR and includes the recent reconfiguration of the security fencing on the east side of the Security and Operations Building.

Environmental

On January 31st the State received the fourth quarter results from the field replacement of the thermoluminescent dosimeters² (TLDs) around the ISFSI and Bailey Cove. The results from the quarterly TLD 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 high stations identified were G, K, and M and averaged 29.3 milliRoentgens³ (mR). G and K are explainable due to their proximity to the storage casks. However, M is not near the casks and has usually been in the normal group, except that it was in the slightly elevated group last quarter. Although Station M is near an asphalt road which normally has a higher radiation background, it does not explain why this past quarter this station read higher. The field notes indicate that there appeared to be water or moisture inside the seal pouch. If so, the reading should have been lower. This is the second consecutive quarter where the elevated TLD group had three stations as compared to the historical two.

The moderately high group station is usually comprised of four stations. This quarter, however, there is only one TLD for that group and it is L with an average of 26.8 mR. The remaining stations, A, B, C, D, E, F, H, I, and J averaged 23.9 mR. Normally, stations E and F are in the slightly elevated group. It was observed that this time both stations had one element in one TLD that was excluded from the results due to a higher than expected reading. When this happens the dosimetry company that reads the TLDs will employ a statistical test to see if the data point is an outlier. If it is, it will be rejected and not included in their report.

Upon closer examination of the affected TLDs for station E and F, station E's element readings were 23, 24, 24, 26, and 27 with an outlier reading of 34.7. Likewise, station F's element readings were 23, 24, 24, 25, and 25 with an outlier reading of 29.6. In performing the statistical test for each outlier, the data was rejected up to the 95% confidence level, but it was not at the 99% confidence interval. That means the probability of rejecting a valid number is between 1 and 5%. Therefore, the State accepted the outlier data and the TLD averages increased from 24.8 to 26.5 for station E, and from 25.0 to 25.2 for station F. This raised station E to the slightly elevated group, but station F remained in the normal group.

² Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For more information, refer to the glossary on the Radiation Program's website.

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

The Bailey Cove TLDs averaged 25.0 mR and ranged from 20 to 32 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.

In comparison the normal expected quarterly background radiation levels on the coast of Maine range from 15 to 30 mR. The background levels are highly dependent upon seasonal fluctuations in Radon, tidal effects, and local geology. The control TLDs that are stored at the State's Radiation Control Program in Augusta averaged about 26.7 mR.

All the fourth quarter TLD results were lower when compared to the previous quarter's results. That is to be expected as there are seasonal fluctuations in the radiation background due to frozen conditions and snow cover, which primarily impedes the out gassing of natural radioactive Radon gas in the soils.

For informational purposes Figure 1 on page 4 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 three highest locations being stations G, K, and M.

Maine Yankee Decommissioning

The preliminary draft of the Confirmatory Summary Report detailing the State's involvement and independent findings is about 75% completed.

Groundwater Monitoring Program

Although it was expected that the groundwater data would be reviewed in its entirety, only some portions were reviewed. The hard-to detects⁴ (HTDs) and Transuranic⁵ (TRUs) analyses were reviewed to ensure that the required analyses were performed. Initially, it appeared that one of the transuranic analyses for Plutonium-241 may have been overlooked. Upon closer scrutiny Maine Yankee found that the analysis was performed and notified the State. A cursory review of the results indicated that eleven of the fourteen wells had some HTDs, principally Nickel-63 and Strontium-90. The highest well, MW-502, had a calculated radiological dose⁶ of 1.2 mrem. None of the wells exceeded the state's decommissioning dose standard of 4 mrem from groundwater sources.

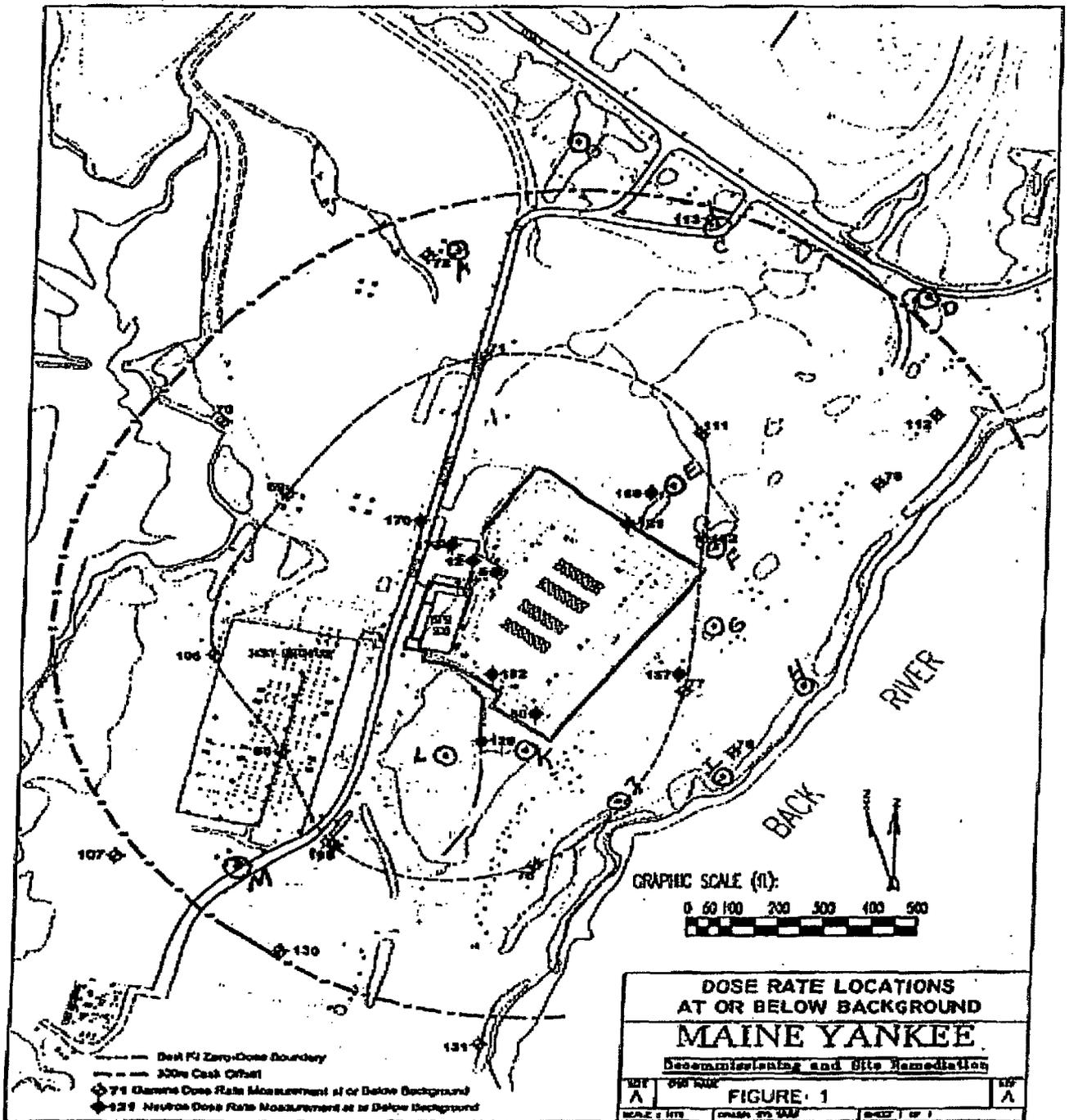
A more detailed data review was deferred due to other competing priorities that included the State Inspector's annual accounting report to the Legislature's Joint Standing Committee on Utilities and Energy on all the funds received and disbursed from the Interim Spent Fuel Storage Facility Oversight Fund. Other priorities included the Inspector's submission of his past, present, and future activities reports to the Manager of the Radiation Control Program for inclusion into the Manager's annual report to the joint standing committee of the Legislature having jurisdiction over utilities and energy. A more detailed assessment of the groundwater data will be performed when the fifth and final Groundwater Report is published by Maine Yankee.

⁴ Hard-To-Detects refers to those radioactive elements that emit certain types of radiation, such as alpha or beta particles, which may require special chemical separation techniques and/or special instrumentation to detect their presence.

⁵ Transuranic is a term used to describe those elements that are heavier than Uranium such as Neptunium, Plutonium, Americium, etc.

⁶ Dose denotes the quantity of radiation or energy absorbed by the human body and mrem denotes a special unit of that dose. For more information, refer to the glossary on the Radiation Program's website.

Figure 1



Other Newsworthy Items

1. On January 3rd the federal government filed with the U.S. Court of Appeals for the District of Columbia Circuit its response and an addendum to the petitioners' (Aiken County, South Carolina, the states of Washington and South Carolina, the three business leaders from the Tri-City area near Hanford, Washington, and the National Association of Regulatory Utility Commissioners)

mandamus petitions and petitions for review and injunctive relief. The respondents opposed the mandamus and the injunctive relief petitions on the basis that the petitioners have available remedies and have not demonstrated irreparable harm in the absence of an injunction. This is part of the Court's expedited briefing schedule in preparation for the March 22nd oral arguments on the Yucca Mountain license application.

2. On January 3rd the State of Nevada filed with the U.S. Court of Appeals for the District of Columbia Circuit its response brief opposing the petitions filed by Aiken County, South Carolina, the states of Washington and South Carolina, the three business leaders from the Tri-City area near Hanford, Washington, and the National Association of Regulatory Utility Commissioners. Nevada maintains that the Nuclear Waste Policy Act does not contain language that would prevent the Department of Energy to withdraw its license application to construct a repository at Yucca Mountain.
3. On January 4th the Nuclear Waste Strategy Coalition sent a letter to Energy Secretary Chu requesting when the Department of Energy will issue their financial and budget report that illustrates how the Nuclear Waste Fund fees are being administered. A copy of their letter is attached.
4. On January 5th the Nuclear Waste Strategy Coalition held its bi-monthly conference call to provide an update to the ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members on the Nuclear Regulatory Commission's status on the Yucca license application and its Safety Evaluation Report, Volume 3 on Yucca Mountain, the U.S. Court of Appeals cases on the Yucca Mountain license proceedings and the Nuclear Waste Fund fee, congressional budget activities, the Blue Ribbon Commission meetings, and the utility lawsuits against the Department of Energy.
5. On January 6th-7th the Blue Ribbon Commission on America's Nuclear Future toured the Savannah River Site nuclear complex and held a meeting in Augusta, Georgia to hear from state and local officials and the public on how the nation's high-level waste should be managed. State and local officials included the mayors of Augusta and Waynesboro, Georgia, U.S. Senator Lindsey Graham from South Carolina, representatives of U.S. Senators Jim DeMint of South Carolina, Johnny Isakson and Saxby Chambliss of Georgia, and staff of the U.S. House of Representatives John Barrow and Paul Broun of Georgia. In addition, two panels were convened, one for environmental perspectives and the second for economic and other considerations. A copy of the agenda is attached.
6. On January 7th Aiken County, South Carolina, the states of Washington and South Carolina, the three business leaders from the Tri-City area near Hanford, Washington, and the National Association of Regulatory Utility Commissioners filed with the U.S. Court of Appeals for the District of Columbia Circuit its motion to calendar oral arguments that were initially held in abeyance pending the Nuclear Regulatory Commission's decision to either uphold or overrule its own Atomic Safety and Licensing Board's June 29th ruling denying the Department of Energy's request to withdraw its Yucca Mountain license application.
7. On January 10th the U.S. Court of Appeals for the District of Columbia Circuit set March 22nd as the date to hear oral arguments on the Yucca Mountain Project. A copy of the Court order is attached.
8. On January 12th the Nevada Commission on Nuclear Projects issued their 2010 Report and Recommendations. Besides highlighting actions of the Nuclear Regulatory Commission, the Department of Energy and the Blue Ribbon Commission, the report lists the key lessons learned from the Yucca Project, lessons for siting future facilities, implications for Nevada and recommendations going forward. A copy of the summary is attached.

9. On January 12th the Sustainable Fuel Cycle Task Force issued a Science Panel Statement on nuclear waste management and scientific integrity. The statement questions the Administration's actions in light of the President's March 9, 2009 memorandum clearly expressing the need for preservation and promotion of scientific integrity and furthered by Dr. John Holdren's December 17, 2010 memorandum on scientific integrity. The statement was forwarded to Nuclear Regulatory Commission officials. A copy of the statement is attached.
10. On January 12th the U.S. Nuclear Waste Technical Review Board (NWTRB) issued a news release that it will hold a February 16th meeting in Las Vegas, Nevada to consider technical lessons learned from developing a geologic repository for used nuclear fuel and high-level waste. The NWTRB was formed by Congress when the Nuclear Waste Policy Act was amended in 1987 to independently oversee the Department of Energy's repository activities and provide expert advice to Congress and the Energy Secretary. A copy of the news release is attached.
11. On January 13th the State of Nevada filed with the U.S. Court of Appeals for the District of Columbia corrections to its January 3rd response brief on the petitions seeking relief from decisions made by the President, the Secretary of Energy, the Department of Energy, and the Nuclear Regulatory Commission. The errata involved numbering the pages for the cases, statutes, and authorities cited by the State of Nevada.
12. On January 18th Aiken County, South Carolina, the states of Washington and South Carolina, the three business leaders from the Tri-City area near Hanford, Washington, and the National Association of Regulatory Utility Commissioners filed with the U.S. Court of Appeals for the District of Columbia Circuit their reply brief highlighting the Department of Energy's dismantling of the Yucca Mountain Project, the Nuclear Regulatory Commission's (NRC) termination of their review of the Yucca Mountain license application, and the NRC's inaction on the License Application Withdrawal since their earlier June 18, 2010 filing. In addition, the petitioners also filed their addendum on their reply brief in anticipation of the March 22nd oral arguments on their petitions for relief from decisions made by the President of the United States, the Secretary of Energy, the Department of Energy, and the Nuclear Regulatory Commission on the Yucca Mountain license application.
13. On January 18th the House of Representatives Committee on Energy and Commerce issued their key issues report that they plan to address in the 112th Congress. The page containing their agenda on "Nuclear Oversight & Investigations" is attached.
14. On January 19th the Nuclear Waste Strategy Coalition held its second bi-monthly conference call to provide an update on the Nuclear Regulatory Commission's and the U.S. Court of Appeals statuses on the Yucca Mountain license application, the Nuclear Waste Fund fee litigation, and congressional activities relative to FY 2011 Appropriations Continuing Resolution.
15. On January 20th the State of Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its motion for reconsideration of the Board's rejection of a previous contention that was dismissed by the Board. Nevada argues that the Board's recent December 2010 Order on Phase I legal issues resurrects the initial legal basis which the Board had earlier decided as moot or irrelevant. The safety contention deals with the erosion of Yucca Mountain to the point that the repository is exposed within 500,000 years after the repository's closure.
16. On January 21st the State of Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its four safety contentions against the Department of Energy's license

application to construct a used nuclear fuel repository at Yucca Mountain. The first Nevada safety issue dealt with the DOE's ability to exclude deviations from repository design or errors. The remaining three safety issues involved the assumption of the complete and total failure of the drip shields.

17. On January 21st the Department of Energy (DOE) filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its statement of additional views as per the Board's December 14th Order. The DOE argues that four Nevada safety issues should be dismissed. DOE admitted that it could not exclude deviations from repository design or errors and corrected this deficiency before submitting its license application. Therefore, Nevada's point is moot and should be dismissed. The remaining three safety issues rest on the drip shields as being the only barrier for the entire repository. Since the repository design is based on a multi-barrier system, DOE contends that the safety issues have been adequately addressed and Nevada's contentions should be dismissed.
18. On January 21st the Nuclear Energy Institute filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board declaring its right to respond to any motions relative to its Phase I safety contention on excessive conservatism employed in the post-closure nuclear criticality analysis for Yucca Mountain.
19. On January 21st the Department of Energy (DOE) filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its motion to renew the temporary suspension of the Yucca Mountain license proceedings. DOE's filing also included its joint report with all the intervenors as to their position on DOE's motion to renew the temporary suspension. Eureka County, Nevada and the Nuclear Energy Institute supported DOE's relief motion. Clark and Lincoln Counties, Nevada, Inyo County, California, the State of Nevada, the Nuclear Regulatory Commission Staff, the Joint Timbisha Shoshone Tribe, and the Native Community Action Council did not oppose DOE's motion. Aiken County, South Carolina, the states of Washington and South Carolina, the California Energy Commission, the National Association of Regulatory Utility Commissioners, Nye and White Pine Counties, Nevada, and Prairie Island Indian Community took no position but rather reserved their right to respond once DOE files its motion.
20. On January 21st the Nuclear Regulatory Commission (NRC) Staff filed with the NRC's Atomic Safety and Licensing Board its opposition to the four safety contentions from Nevada and one safety contention from the Nuclear Energy Institute. The Staff was requesting that all five safety contentions be dismissed.
21. On January 26th-28th the Blue Ribbon Commission on America's Nuclear Future toured the Waste Isolation Pilot Plant (WIPP) disposal complex and held meetings in Carlsbad and Albuquerque, New Mexico. The Carlsbad meeting on the 27th featured three panels with overviews on WIPP's background and history critique, WIPP's transportation topics such as operations, issues and local impacts, and lessons learned from the WIPP siting. The meeting on the 28th in Albuquerque included two panels, one on state, local and tribal perspectives, and the other on the National Transuranic Program. The nation's defense-related transuranic radioactive waste is disposed at the WIPP facility. Copies of both agenda are attached.
22. On January 28th Aiken County, South Carolina filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its response to the Department of Energy's (DOE) motion to renew the temporary suspension of the Yucca Mountain licensing Proceedings. Aiken County considered the DOE motion a delay tactic and requested the Board to deny their motion.

23. On January 31st the Department of Energy (DOE) filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its opposition to the State of Nevada's motion for reconsideration of the Board's earlier rejection of its safety issue on the effects of erosion increasing radiological exposures after 10,000 years based on erosion effects 500,000 years after the waste is emplaced. DOE opposes Nevada's reconsideration and contends the Board earlier dismissal was proper.
24. On January 31st the Nuclear Regulatory Commission Staff filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its opposition to the State of Nevada's motion for reconsideration of the Board's earlier rejection of its safety issue on the effects of erosion increasing radiological exposures after 10,000 years based on erosion effects 500,000 years after the waste is emplaced. The Staff opposes Nevada's reconsideration on the grounds that it is untimely and does not demonstrate compelling circumstances.

Other Related Topics:

1. On December 28th the Nuclear Regulatory Commission issued its report on its December 1st inspection of Maine Yankee's ISFSI facility. Based on interviews and reviews of selected procedures and records, the inspection evaluated the facility's programs such as radiation protection, fire protection, emergency preparedness, surveillance, environmental monitoring, training and quality assurance. There were no findings. The 2011 inspection will address the ISFSI security program.

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



January 4, 2011

Letter sent by facsimile

The Honorable Steven Chu
Secretary of Energy
United States Department of Energy
Washington, D.C. 20585-1000

Dear Mr. Secretary:

The members Nuclear Waste Strategy Coalition (NWSC) are disappointed that while the Department of Energy (DOE) has cut off all funds and dismantled the nuclear waste disposal program, the Administration's policy is to continue collecting approximately \$758 million in fees paid into the Nuclear Waste Fund (NWF) by the nation's ratepayers.

Since 1983, ratepayers from 41 states have paid more than \$35 billion, including interest, into the NWF, which Congress established for the development of a permanent repository and the removal of spent nuclear fuel and high-level radioactive waste from decommissioned and nuclear plant sites.

The DOE concluded in its October 2010 NWF fee adequacy review, that it found no evidence the charge of 1/10-cent per kilowatt hour should be altered or postponed as required by the 1982 Nuclear Waste Policy Act, as amended.

The NWSC still holds the DOE accountable to issue on a regular basis a financial and budget report showing how the amount of NWF fees collected are being administered. The last summary of the Program Financial and Budget Information Report was issued on January 31, 2010. Therefore, we will like to know when will the DOE plans to issue the next report accounting for the NWF income and disbursements.

The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 47 member/affiliate organizations in 31 states, committed to reforming and adequately funding the U.S. civilian high-level nuclear waste transportation, storage, and disposal program.

Respectfully yours,

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

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

C: The President of the United States
The Honorable Pete Lyons, DOE/Assistant Secretary for Nuclear Energy Nominee

**Blue Ribbon Commission on America's Nuclear Future
January 7, 2011 Meeting**

**August Marriott Riverwalk
Augusta, GA**

**DRAFT Agenda
Rev. 12/20/10**

Friday Jan 7

8:00 a.m.	DOE Designated Federal Official	Tim Frazier
	Opening remarks by Commission co-chairs, members	Co-Chairman Hamilton, Co-Chairman Scowcroft, Commissioners
8:10 a.m.	Official Greeting and Statement	Deke Copehaver, Mayor Augusta, GA.
8:20 a.m.	Southern Nuclear Operating Company	James Miller
8:45 a.m.	Mayor of Waynesboro, GA	George Deloach
9:00 a.m.	Labor Relations Plant Site Coordinator	Shawn Merrick
9:15 a.m.	SC Governor	(Gov. Mark Sanford – TBD)
9:30 a.m.	GA Governor	(Gov. Sonny Perdue – TBD)
9:45 a.m.	SC Senator	(Sen. Lindsey Graham – TBD)
9:50 a.m.	SC Senator	(Sen. Jim DeMint – TBD)
9:55 a.m.	GA Senator	(Sen. Johnny Isakson – TBD)
10:00 a.m.	GA Senator	(Sen. Saxby Chambliss – TBD)
10:05 a.m.	SC Congressman	(Rep. James Clyburn – TBD)
10:10 a.m.	SC Congressman	(Rep. Joe Wilson – TBD)
10:15 a.m.	SC Congressman	(Rep. Jeff Duncan – TBD)
10:20 a.m.	GA Congressman	(Rep. John Barrow – TBD)

10:25 a.m.	GA Congressman	(Rep. Paul Broun – TBD)
10:30 a.m.	SC Attorney General	Henry McMaster
10:40 a.m.	BREAK	
10:55 a.m.	Panel One – Environmental Perspectives	Friends of the Earth (Tom Clements), Women’s Action for New Directions (Dianne Valentin) SRS Citizens’s Advisory Board (Manuel Bettencourt), Citizens for Nuclear Technology Awareness (Clint Wolfe), Blue Ridge Environmental Defense League (Charles Utley)
12:10 p.m.	Lunch	
1:00 p.m.	SC Gov. elect	(Nikki Haley – TBD)
1:15 p.m.	GA Gov. elect	(Nathan Deal – TBD)
1:25 p.m.	Savannah River Site Superfund Job Training Initiative (SRS-SuperJTI)	Brendolyn Jenkins
1:35 pm	Governor’s Nuclear Advisory Council	Karen Patterson
1:45 p.m.	Panel Two – Economic/Other Considerations	Aiken County Council Chairman (Ronnie Young), Community Reuse Organization (David Jameson), CSRA Chambers of Commerce (Brian Tucker), Economic Development Organizations (Danny Black), Aiken Technical College (Dr. Susan Winsor)
2:50 p.m.	Public Comment Period	
3:50 p.m.	Adjourn Meeting	

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050

September Term 2010

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

Filed On: January 10, 2011 [1287046]

In re: Aiken County,

Petitioner

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

ORDER

It is **ORDERED**, on the court's own motion, that this case be scheduled for oral argument on March 22, 2011, at 9:30 A.M., before Chief Judge Sentelle and Circuit Judges Brown and Kavanaugh.

The time and date of oral argument will not change absent further order of the Court.

A separate order will be issued regarding the allocation of time for argument.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Cheri W. Carter
Deputy Clerk

The following forms and notices are available on the Court's website:

Memorandum to Counsel Concerning Cases Set for Oral Argument (Form 71)

**2010 REPORT AND
RECOMMENDATIONS
OF THE NEVADA COMMISSION
ON NUCLEAR PROJECTS**

A SUMMARY OF KEY POINTS



Prepared by the Nevada Agency for Nuclear Projects

January 2011

2010 Report of the Nevada Commission On Nuclear Projects: Summary of Key Points

“The continuing uncertainty that permeates the Yucca Mountain program is especially troubling for the State of Nevada Nevada now finds itself in a legal and procedural limbo. It will likely be well into 2011 or beyond before developments in the licensing, legal and political arenas will have been sufficiently sorted out to know whether Yucca Mountain is to go forward in licensing or is to be terminated, as DOE proposes. ... [T]he Governor and Legislature must remain vigilant and be prepared to continue aggressive opposition to Yucca Mountain until its fate is ultimately determined.”

Richard H. Bryan, Chairman
Nevada Commission on Nuclear Projects

Overview

- While the Commission is cautiously optimistic that the Yucca Mountain project will ultimately be terminated for good, the fate of the program remains uncertain as the NRC and the federal courts struggle with the legal issues surrounding DOE’s proposed withdrawal of the license application and as the Blue Ribbon Commission on America’s Nuclear Future looks for workable alternative solutions to the eternally vexing problem of spent nuclear fuel and high-level radioactive waste.

NRC Licensing

- DOE submitted a license application (LA) for authorization to construct a Yucca Mountain repository in June 2008.
- Nevada challenged the application and submitted 235 challenges or contentions addressing serious deficiencies in the LA, ranging from flaws in the overall performance assessment model and calculations to specific geotechnical issues, such as the potential for renewed volcanic activity at the Yucca Mountain site, corrosion of the waste disposal packages, the implications of DOE’s proposed use of drip shields to shelter waste packages from water in the tunnels, and other key site suitability issues.
- The NRC licensing board (known as the Construction Authorization Board or CAB) eventually accepted 224 of Nevada’s challenges for adjudication in the proceeding.
- In all, 296 contentions were accepted by the CAB from all parties in the proceeding. This represents the largest, most complex, and most contested licensing proceeding in NRC’s history.
- Just as the discovery phase of the proceeding was about to begin in February 2010, DOE filed a motion with the CAB to withdraw its application, announcing that it intended to terminate the Yucca Mountain program.

- DOE's announcement and motion prompted a reaction by pro-Yucca interests.
- The states of Washington and South Carolina (states where DOE defense waste is currently being stored) and several other entities (a South Carolina county, the Nuclear Energy Institute, the National Association of Regulatory Utility Commissioners, and three individuals in Washington State) immediately petitioned the CAB for admission to the licensing proceeding for the purpose of opposing the withdrawal motion. They also filed suit in the DC Circuit Court of Appeals to stop DOE from terminating the program.
- On June 29, 2010, the CAB issued a ruling denying DOE's motion to withdraw the license application.
- Nevada and several other parties immediately appealed the decision to the full Nuclear Regulatory Commission.
- As of the date of this report, NRC had not acted on the appeal.
- The Circuit Court of Appeals and the NRC may both direct the licensing process to continue.
- Ultimately, Congress will make the final decision on whether or not to go forward and fund the Yucca Mountain project.

DOE Actions to Terminate the Yucca Program

- Despite the decision of the NRC licensing board denying DOE's motion to withdraw the Yucca Mountain license application, DOE is moving ahead with actions indicative of terminating the program.
- As of October 1, 2010, the Office of Civilian Radioactive Waste Management (OCRWM), the organization within DOE responsible for the Yucca Mountain program, has been formally disbanded, with responsibility for waste disposal activities transferred to DOE's Office of Nuclear Energy.
- Decisions regarding alternative approaches for managing waste were delegated to the newly-established Blue Ribbon Commission on America's Nuclear Future, which was established by Presidential Order in January 2010.

The Blue Ribbon Commission on America's Nuclear Future

- The BRC has 15 members appointed by the President and representing a wide range of expertise and diverse backgrounds.
- It is co-chaired by two well-respected individuals, former congressman and vice chair of the 9/11 Commission, Lee Hamilton and former National Security Advisor, Brent Scowcroft.
- The BRC is charged with conducting a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel, high-level waste, and materials derived from nuclear activities.
- The Commission is specifically directed NOT to consider Yucca Mountain as an alternative because the Energy Secretary has determined the Yucca Mountain project to be unworkable.
- The BRC is scheduled to issue a draft report in June 2011 and a final report in January, 2012.

- The Nevada Agency for Nuclear Projects is providing input into the Commission's process by making available information regarding lessons learned from the failed Yucca Mountain program.

Nuclear Waste Transportation

- The Nevada Commission on Nuclear Projects found that, despite years of effort and extensive input from Nevada, state regional groups, and a wide range of stakeholder groups, organizations and entities, DOE has made scant progress in addressing, much less resolving, key transportation issues.
- Nuclear waste transportation remains a major concern and a key driver of impacts that would be associated with any future processing, storage, and disposal facilities regardless of where such facilities might be located.
- Each year, DOE does ship more than one thousand loads of *low level* nuclear waste to the Nevada National Security Site (formerly the Nevada Test Site) for burial.

Key Lessons Learned from the Failed Yucca Mountain Program

- While Yucca Mountain failed for many reasons, a critical element was unquestionably the forced nature of the siting process.
- In 1987, when Congress directed that Yucca Mountain be the only site to be studied, DOE used that directive as the basis for pushing ahead with the project even when the data showed serious flaws in the site and in the face of strong and determined opposition from the state.
- If DOE had been required to obtain the State's informed consent to continue with the project, Yucca Mountain would have been disqualified years earlier (saving billions of dollars and years of effort) and DOE would have had to move on to identify a truly suitable location.
- Underlying everything was the fact that Yucca Mountain was a scientifically bad site from the beginning, with fast groundwater pathways, an oxidizing and corrosive subsurface environment, unacceptably high level potential for escaping radioactive gasses, recent volcanism, high levels of seismicity, and other serious flaws.
- The U.S. Department of Energy was probably the wrong entity to implement the federal high-level radioactive waste program and placing the program within DOE may have doomed it from the start.
- The very character of DOE, with its culture of secrecy, its 'we know best' decision-making, its schedule-driven approach, and its historical inability to work in a cooperative manner with states and communities, made it the worst possible entity to implement a program that required the level of sophistication needed to effectuate the difficult compromises embodied in the Act.
- Because of the heavy-handed manner in which DOE has implemented the Yucca Mountain program and the history of instability in leadership, mismanagement, faulty science and data irregularities, and a host of other serious problems over the years, it would be next to

impossible for a similar siting program implemented by DOE to obtain the level of trust and confidence necessary for a successful program.

Lessons for Future Nuclear Facilities Siting

- A successful facility siting program must be fully voluntary and must obtain the fully informed consent of the host state, tribe (if applicable) and local community.
- Any future siting effort must be based on and motivated by irrefutably sound science.
- A scientifically credible repository siting effort must have as its foundation objective and rigorous criteria against which the geotechnical suitability of a site would be evaluated.
- The criteria must be established in advance of the siting effort and not structured so as to apply only to specific sites. The application of the criteria to candidate sites must be objective and above reproach, and criteria cannot be changed based on conditions found when studying or characterizing various sites.

Findings and Implications for Nevada

- The Commission finds that the decision by the Secretary of Energy to terminate the Yucca Mountain program and withdraw the license application was appropriate, necessary, and more than justified by the weight of evidence indicating that the Yucca Mountain site is unsafe and unsuitable for a high-level radioactive waste repository.
- It is by no means a certainty that DOE will be able to obtain a license to construct a repository at Yucca Mountain. In fact, given the nature and seriousness of the contentions filed, a rejection of DOE's application by the NRC licensing board had to be considered a strong possibility.
- The shift away from the narrow focus on geologic disposal and Yucca Mountain to forward-looking technologies like dry storage, reprocessing and transmutation may, in the long run, be extremely beneficial for the nation and for the nuclear power industry.
- Politics continue to be a preeminent factor in the Yucca Mountain program.
- It is possible that, based on actions by the courts and the outcome of the 2010 elections, decisions could be made resurrecting the Yucca Mountain program and restarting the licensing proceeding. Such a possibility would require intensive efforts by the State of Nevada to quickly and substantially ramp up efforts to again challenge the Yucca Mountain license application before the NRC.
- If, however, the decision to terminate the project is sustained, much work on the part of the State of Nevada would be required to oversee the shut down and decommissioning of the site and to oversee and participate in the work of the Blue Ribbon Commission to assure Nevada's interests are protected with respect to future waste management alternatives that might be identified.

Recommendations of the Commission

- *The Governor and the Legislature must continue to reject any proposal to negotiate for benefits in exchange for agreeing to the Yucca Mountain project or that would have Nevada consider reprocessing and/or interim storage facilities at the site.*
 - There are insurmountable problems with any calls for negotiation. First among them is the fact that the same geotechnical, transportation, environmental, and economic risk factors that made Yucca Mountain unsafe and unsuitable as a repository site also make it unsafe and unacceptable for other nuclear facilities. Second, there are no financial or other benefits to be had. The State does not own the waste, the land or the transportation routes proposed for this project.

- *The Nevada Agency for Nuclear Projects continues to be vital to the State's ability to oversee the Yucca Mountain program and assure that Nevada's interests are protected with respect to the activities and subsequent recommendations of the Blue Ribbon Commission on America's Nuclear Future.*
 - The Agency has developed information and expertise regarding the program that is unique and not available anywhere within or without state government. While the Nevada Attorney General is responsible for overseeing the legal aspects of the State's licensing efforts, it is crucial that the Agency continue to have the resources to provide the technical and policy support indispensable to a successful licensing intervention.
 - The effort on the part of the Agency to effectively provide technical, scientific, and policy support in the NRC licensing proceeding is and will continue to be critical for protecting Nevada's interests and successfully opposing DOE's license application.
 - The Agency, through massive restructuring, has reduced its general fund budget by more than 65% since 2009.



Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

Sustainable Fuel Cycle Task Force Science Panel

January 12, 2011

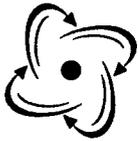
Sustainable Fuel Cycle Task Force Science Panel

Nuclear Waste Management and Scientific Integrity

As the federal government moves into 2011 in a continuing resolution, actions taken by the Administration have brought to a standstill all work related to solving the United States' program of high-level radioactive waste and spent nuclear fuel disposal. No viable alternative solution has been brought forward, let alone authorized by Congress, as a replacement for their directive of July 23, 2002, in Public Law 107-200, approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste policy Act of 1982. There is no scientific reason for this situation; in fact the scientific soundness of the selection of Yucca Mountain was well on its way to being independently confirmed when the Administration stopped the program. Credible scientific support for the project is found throughout the community of knowledgeable scientists and engineers.

On December 17, 2010, John P. Holdren, assistant to the President for Science and Technology and Director of the Office of Science and Technology Policy, issued an important memorandum on scientific integrity. The memorandum responded to a March 9, 2009 memorandum issued by President Obama articulating principles central to the preservation and promotion of scientific integrity. As Director of the Office of Science and Technology Policy, Dr. Holdren is responsible for ensuring the highest level of integrity in all aspects of the Executive Branches involved with scientific and technical processes.

There is conspicuous inconsistency between the intent of the Holdren memorandum and the Administration's actions in suspending activities related to the licensing of Yucca Mountain. To satisfy commitments made during the presidential campaign, the Secretary of Energy, without technical basis, and without consulting Congress, attempted to withdraw, with prejudice, the license application that Congress directed the Department of Energy to prepare and submit to the Nuclear Regulatory Commission. He also unilaterally ceased work on the Yucca Mountain project. More than six months have passed since the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (Board) unanimously rejected the Department of Energy's Yucca Mountain project license application withdrawal request. During this time, the Commissioners' impasse in acting to affirm or overturn the Board decision has been accompanied by staff inaction in delivering the Safety Evaluation Report on post closure safety of Yucca Mountain. The failure of the Nuclear Regulatory Commission staff to publicly release their Safety Evaluation Report has been challenged by the Board; the staff response only indicates once again that the technical process is being held hostage to political desires, implemented by no less than the Chairman of the Nuclear Regulatory Commission himself.



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A likely possible outcome of that Safety Evaluation Report, viewed in light that the NRC staff has stated that all requested information has been provided, is that the staff would agree that the safety of Yucca Mountain has been demonstrated to their satisfaction.

The Holdren memorandum notes that it is important that policymakers involve science and technology experts where appropriate and that the scientific and technological information processes relied upon in policymaking be of the highest integrity. There can be no doubt that by requiring the Department of Energy, in the Nuclear Waste Policy Act, to obtain a license from the Nuclear Regulatory Commission, Congress intended just that.

Failing to offer a technical rationale for ceasing work on the Yucca Mountain program, the Secretary of Energy has stated that there is a better way to deal with the wastes than disposal at Yucca Mountain. In passing the Nuclear Waste Policy Act, Congress found that a national problem had been created by the accumulation of spent nuclear fuel and radioactive waste from reprocessing. Importantly, it acknowledged that Federal efforts over 30 years to devise a permanent solution had not been adequate. Those 30 years were marked by false starts on disposal programs and continued rejection of storage alternatives. Every action that has been taken regarding the Yucca Mountain program since the Nuclear Waste Policy Act was passed in 1982 has been specifically requested by Congress. Further, at appropriate points since that time, Congress has been asked to make decisions about the Yucca Mountain repository. Each of these decisions resulted in further action being taken toward development of the repository.

Today, while the legislatively mandated license application sits in limbo, no technical authority has concluded either that Yucca Mountain is not suitable for a repository, or that the science supporting the license application is not sound. There are no published analyses, done in conformance with the applicable requirements and standards that show that the Yucca Mountain site would not meet the safety standards. Statements purporting that the Yucca Mountain site does not meet the safety standards are found to be either not supported by analyses that conform to the regulations, or are based on selected portions of outdated analyses that are not consistent with the current requirements. Moreover, presentations to the Blue Ribbon Commission, empanelled by the Secretary to articulate the "better way to deal with the wastes," have revealed nothing new. This is not surprising, as the country debated the merits of alternative means of disposal of the wastes more than once before embarking on the path forward legislated by the Nuclear Waste Policy Act. Even the reprocessing options being studied today do not lead to a complete solution. Evaluations have shown that legacy wastes likely will not be reprocessed and will require repository disposal. All known advanced technology options have some residual high level radioactive waste. High-level radioactive wastes have no disposal path other than a repository.



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In their December 2010 report, *Evaluation of the Technical Basis for Extended Dry Storage and Transportation of Used Nuclear Fuel*, the U.S. Nuclear Waste Technical Review Board found that numerous important aspects of long term storage of spent nuclear fuel are not well understood. Little data are publicly available on the behavior of high-burn up fuel during dry storage and on its subsequent handling and transportation. No information is available on the behavior during dry storage of the more advanced materials now being used for fuel cladding and fabrication of fuel-assembly structural components. The fuel, the dry-storage system components (canister, cask, etc.), and the concrete foundation pad may all degrade during dry storage. Some degradation mechanisms may be active during the early years of dry storage, while different mechanisms may be active at the lower temperatures that would be expected during extended storage. Accurately predicting how the used fuel and canister temperatures will change over extended dry storage is important; however, little information was found on detailed thermal modeling during the period of extended dry storage. The physical state of the cladding when fuel is placed into dry storage is not currently well characterized. Cladding-degradation mechanisms, their interactions with each other, and the expected behavior of cladding after aging in extended dry storage are not well understood. Also not well understood are some of the conditions that affect these degradation mechanisms, such as predictions of the fuel temperatures over time and the amount of residual water present after drying. Corrosion mechanisms will cause degradation of the metal components of dry-storage systems during extended dry-storage periods.

The Holdren memorandum also requires agencies to develop a culture of scientific integrity, and strengthen the actual and perceived credibility of government research. What better way is there to demonstrate these principles than to let the process Congress intended to happen move forward? The Nuclear Regulatory Commission staff should be directed to issue the Safety Evaluation Report on post closure safety of Yucca Mountain. This would ensure that, as the Holdren memorandum directs, “data and research used to support policy decisions undergo independent peer review by qualified experts where feasible and appropriate and consistent with law.” It would also facilitate the free flow of scientific and technological information, another tenet of the Holdren memorandum.

A way must be found to restart the Yucca Mountain licensing process. A congressionally directed solution is in place, and science, not politics should determine whether or not a license to construct a repository at Yucca Mountain is appropriate. As state governors and other state and local elected officials begin to understand fully that without a repository the wastes will remain where they are indefinitely in 36 states, a plan for storage in lieu of disposal is likely to falter as it has each time it has been proposed in the past. There is nothing to indicate that state opposition to repository development would not be expected if the country sought another repository site. There are, however, indications that local communities may be willing participants. In particular, Nye County, Nevada, has gone on record indicating its acceptance of the role assigned to it when Congress selected Yucca Mountain for repository development.



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The Science Panel of the Sustainable Fuel Cycle Task Force was created to provide independent science based perspectives on issues related to a sustainable nuclear fuel cycle, and offers its services as a source of scientific information about all waste management technical and licensing issues, including Yucca Mountain. If we can be of assistance, please do not hesitate to contact us.

Sincerely,
Science Panel

Isaac Winograd

Isaac Winograd, Ph.D.

Wendell D. Weart

Wendell Weart, Ph.D.

Eugene H. Roseboom Jr.

Eugene H. Roseboom Jr., Ph.D.

Charles Fairhurst

Charles Fairhurst, Ph.D.

D. Warner North

D. Warner North Ph.D.

CC: Commissioner Kristine L. Svinicki, U.S. Nuclear Regulatory Commission
Commissioner George Apostolakis, U.S. Nuclear Regulatory Commission
Commissioner William D. Magwood, IV, U.S. Nuclear Regulatory Commission
Commissioner William C. Ostendorff, U.S. Nuclear Regulatory Commission
R. William Borchardt, Executive Director of Operations, U.S. Nuclear Regulatory Commission
James Dyer, Chief Financial Officer, U.S. Nuclear Regulatory Commission



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
2300 Clarendon Boulevard, Suite 1300
Arlington, VA 22201

*January 12, 2011
For Immediate Release*

*Karyn D. Severson
External Affairs*

NWTRB to Continue Discussions of Technical Issues Related to High-Level Nuclear Waste Management Efforts to Date

The U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, on February 16, 2011, to continue its exploration of technical aspects of the U.S. Department of Energy's (DOE) activities related to managing and disposing of spent nuclear fuel and high-level radioactive waste. The Board will consider technical lessons that can be gained from DOE efforts to develop a permanent repository for spent fuel and high-level radioactive waste over the last two decades. The Board also will review current DOE activities related to implementation of the Nuclear Waste Policy Act.

The Board meeting will be held at the Marriott Suites Convention Center; 325 Convention Center Drive, Las Vegas, Nevada 89109; (Tel) 702-650-2000; (Fax) 702-650-9466. A block of rooms has been reserved at the hotel for meeting attendees. *To ensure receiving the meeting rate, reservations must be made by January 21, 2011.* To make reservations, go to <http://www.marriott.com/hotels/travel/lasst-las-vegas-marriott/?toDate=2/18/11&groupCode=nucnuca&fromDate=2/14/11&app=resvlink> or call 800-244-3364 or 702-650-2000.

A detailed agenda will be available on the Board's Web site at www.nwtrb.gov approximately one week before the meeting. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will begin at 8:30 a.m. in the Lake Mead/Red Rock Salon on the 17th floor of the Marriot Suites Convention Center. Time has been set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on library-loan in paper form from Davonya Barnes of the Board's staff no later than March 21, 2011.

The Board was established as an independent federal agency to provide objective expert advice to Congress and the Secretary of Energy on technical issues and to review the technical validity of DOE activities related to implementing the Nuclear Waste Policy Act. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. Board reports, correspondence, congressional testimony, and meeting transcripts and materials are posted on the Board's Web site: www.nwtrb.gov.

For information on the meeting agenda, contact Karyn Severson. For information on lodging or logistics, contact Linda Coultry; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201-3367; (tel) 703-235-4473; (fax) 703-235-4495.

FRED UPTON
CHAIRMAN

HENRY A. WAXMAN
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-2927

Backgrounders

Key Issues
before the

Committee on Energy and Commerce
112th Congress, First Session

January 18, 2011

Energy and Power Agenda

EPA Regulatory Chokehold: We believe it critical that the Obama Administration “stop” imposing its new global warming regulatory regime, which will undermine economic growth and U.S. competitiveness for no significant environmental benefits. For EPA’s other multi-billion dollar Clean Air Act rules, we believe the agency has been regulating “too much too fast,” without fully analyzing the feasibility and economic and job impacts of the new rules. Congress will be reasserting its oversight function to ensure sufficient analysis supports the proposed new rules, that the rulemaking process allows for open and full evaluation and information, and that the Administration is fully considering jobs and economic impacts in its decision-making. This oversight effort should be a deliberate, thoughtful, and probing process so that the Committee is satisfied that the agency has done its job. The stakes could not be higher; if the Obama Administration succeeds in imposing unaffordable and unworkable permitting and other rules through EPA, it will severely impede the domestic manufacturing and industrial growth necessary for this nation to create jobs and emerge strongly from a devastating recession.

Rising Gasoline Prices: Obama Administration policies are helping gasoline prices to rise and prices are expected to continue higher. Almost 67% of the price of gasoline is the price of oil; and yet, the Administration has consistently created one artificial burden after another to thwart the exploration and production of domestic energy resources. Further compounding the problem, the Administration’s policies on refining make the manufacturing process of transportation fuels more expensive. Our oversight will illuminate the necessity of these resources for continued economic recovery and job creation. In the face of \$4 gasoline, calls for increased supply will be stronger than ever. We will respond by promoting affordable, abundant, and secure sources of energy by preventing the Administration’s regulatory overreach and expanding access in an environmentally responsible manner.

Renewable Electricity Mandates: Although governments have important roles to play in facilitating development of alternative energy, we oppose energy technology mandates that must be met regardless of cost. We will be exploring the electricity cost and reliability implications associated with federal government mandates for increased renewable electricity.

Nuclear Oversight & Investigations: China is building 25 nuclear plants, while the U.S. can’t even process the permit for one, despite Obama Administration promises to “restart” nuclear in the United States. Nuclear power plant licensing remains bogged in federal review, existing facilities face costly new EPA regulations, and the Administration has shirked its legal obligations to develop a nuclear waste repository at the Yucca Mountain site by shutting down the project, developed at the cost of more than \$10 billion. This is not only bad energy policy, but exposes US taxpayers to billions of dollars of new liability costs. The Committee intends to conduct thorough oversight to identify opportunities to reduce regulatory red tape and to ensure that the Administration adheres to its statutory obligations to continue Yucca Mountain development.

Waste in the Stimulus’s Energy Programs: The Committee is committed to conducting oversight over the energy portions of the American Recovery and Reinvestment Act of 2009 (the “Stimulus”). Republicans have a host of questions regarding the efficacy of renewable technology and energy efficiency spending under the Stimulus, and until such questions regarding these programs are comprehensively answered, further Republican conference support for additional spending on such programs will not be forthcoming.

**Blue Ribbon Commission on America's Nuclear Future
January 27, 2011 Meeting**

**Pecos River Conference Facility
711 Muscatel Ave.
Carlsbad, NM**

Final Agenda

Thursday, January 27

8:30 a.m.	DOE Designated Federal Official	Tim Frazier
	Opening remarks by Commission co-chairs, members	Co-Chairman Hamilton Co-Chairman Scowcroft Commissioners
8:40 a.m.	Official Greetings and Statement	Dale Janway, Mayor of Carlsbad, New Mexico
8:45 a.m.	Office of U.S. Senator Tom Udall	Andrew Wallace
8:50 a.m.	Office of U.S. Representative Steve Pearce	Tim Keithly
8:55 a.m.	Perspectives on WIPP	New Mexico Governor Susana Martinez
9:25 a.m.	Panel 1: WIPP Background and History Critique	Former Manager Scientific Programs -WIPP (Wendell Weart), Consulting Geologist (Dennis Powers), Director WSCF Labs (Jim Conca), New Mexico Environment Department (Secretary Dave Martin & James Bearzi), Southwest Research and Information Center (Don Hancock)
11:00 a.m.	Perspectives on WIPP	New Mexico Attorney General Gary King

11:20 a.m.	N.M. State Senators	Carroll Leavell Vernon Asbill
11:30	Panel 2: WIPP Transportation: Operations, Issues & Local Impacts	DOE Carlsbad Field Office (Casey Gadbury), Coordinator of the New Mexico Radioactive Waste Consultation Task Force (Anne deLain Clark), Private Citizen (Margaret Carde), Los Alamos National Laboratory-Carlsbad (Dr. Néd Elkins)
12:30	Lunch	
1:15	Panel 3: Lessons learned from WIPP siting	Chief Scientist – WIPP (Roger Nelson), Former Representative (John Heaton), Former Mayor Carlsbad (Bob Forrest), Historian and Professor (Peter Galison)
2:30	Public Comments	
4:00	Meeting Adjourned	

**Blue Ribbon Commission on America's Nuclear Future
January 28, 2011 Meeting**

**Hyatt Regency
Albuquerque, NM**

Agenda

Friday, January 28th

8:30 a.m.	DOE Designated Federal Official	Tim Frazier
	Opening remarks by Commission co-chairs, members	Co-Chairman Hamilton Co-Chairman Scowcroft Commissioners
8:40 a.m.	Official Greetings and Statements	Mayor, Albuquerque, NM (Richard Berry)
8:45 a.m.	Office of U.S. Senator Jeff Bingaman	Patricia Dominguez
9:05 a.m.	Office of U.S. Senator Tom Udall	Andrew Wallace
9:20 a.m.	Office of U.S. Congressman Ben Ray Lujan	Patrick Duran
9:25 a.m.	DOE Environmental Management	Assistant Secretary Ines Triay
9:55 a.m.	Panel 1: State, Local and Tribal Perspective	Secretary of New Mexico Environment Department (Dave Martin), Environmental Evaluation Group (Bob Neill), Alliance for Nuclear Accountability (Susan Gordon), San Ildefonso Pueblo (Neil Webber)
11:15 a.m.	Break	
11:30 a.m.	Panel 2: National TRU Program	Western Governor's Association (Alex Schroeder) DOE-Carlsbad (Bill Mackie), Carlsbad Office of National TRU Program (J.R. Strobel)

12:15 p.m. Public Comment Period

1:15 p.m. Adjourn meeting, hold brief media availability

State Nuclear Safety Inspector Office

February 2011 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 123rd 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 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 are no longer included in the report. Instead, this information is available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and may redirect the reviewer to the website.

Independent Spent Fuel Storage Installation (ISFSI)

During February the general status of the ISFSI was normal. However, there were two snowstorms that required the implementation of additional measures that were terminated after the snowstorms. There were no instances of spurious alarms due to environmental conditions.

There were no fire or security related impairments in February. There were, however, eleven security events logged (SEL) for the month. All of the SELs were associated with transient environmental conditions including the snowstorms.

There were four condition reports¹ (CR) for the month of February and they are described below.

- 1st CR: Documented minor damage to a conduit during snow removal. The conduit was nicked but there was no damage.
- 2nd CR: Was written to track actions from a review of the Emergency Plan.
- 3rd CR: Documented damage to a signal wire during snow removal. The chirper box was originally installed to scare birds, but did not work as expected. The device was removed.
- 4th CR: Was written to document an omission of a check off while performing fire extinguisher surveillances. The periodic maintenance checks were performed on all the units, but the check off of one of the units was overlooked.

¹ 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

1. On February 8th Maine Yankee submitted its 34th revision of the ISFSI's Off-Site Dose² Calculation Manual (ODCM). The ODCM contains the approved methodologies for estimating doses beyond the ISFSI's site boundary. The ODCM describes the facility's radiological monitoring program and how the thermoluminescent dosimeters³ (TLD) demonstrate compliance with federal regulations. One of the changes specified a quarterly frequency for the TLDs to be analyzed. Another change included the estimated dose report to be part of the annual radiological environmental operating report. The remaining changes were essentially editorial.
2. On February 14th Maine Yankee submitted to the Nuclear Regulatory Commission its periodic update to its License Termination Plan. Maine Yankee noted that there were no changes to its current revision 5 that was originally submitted in February of 2009.
3. On February 17th Maine Yankee submitted nine changes to its Emergency Plan to the Nuclear Regulatory Commission (NRC). Three of the changes were editorial in nature while three others involved formatting. One of the changes involved updating a drawing on the reconfiguration of the fencing near the Security and Operations Building. Another change allowed the use of flammable/combustible liquids within ten feet of the vertical concrete casks for ISFSI operations or maintenance. The other change eliminated the radiological information from the list of pre-scripted information initially communicated to the Maine State Police and the NRC in an Unusual Event.

Environmental

Although air filters are collected on a biweekly basis from the roof of the Health and Environmental Testing Laboratory, they are not analyzed until the end of each calendar quarter.

Maine Yankee Decommissioning

The preliminary draft of the Confirmatory Summary Report detailing the State's involvement and independent findings is about 95% completed.

Groundwater Monitoring Program

There is nothing to report on the radiological groundwater monitoring program.

Other Newsworthy Items

1. On February 1st -2nd the Blue Ribbon Commission on America's Nuclear Future held a meeting in Washington, D.C. The venue included three roundtable discussions on key questions raised during Commission hearings. The panels will focus on establishing an environmentally, politically, and socially legitimate facility siting process, the organization and scope of the governing body managing the nation's nuclear waste, and financial consideration issues. A copy of the agenda is attached.

² Dose is a general term denoting the quantity of radiation energy deposited in the human body multiplied by a quality factor that depends on the different types of radiation absorbed in the body.

³ Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For more information, refer to the glossary on the Radiation Program's website.

2. On February 1st the petitioners from Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford site in Washington filed with the U.S. Court of Appeals for the District of Columbia a motion to submit a supplemental joint appendix and revised addenda before the Court. The petitioners consulted with the respondents (the President, Energy Secretary Chu, the Department of Energy, and the Nuclear Regulatory Commission) in the case and the respondents do not oppose the petitioners' submission.
3. On February 3rd the Nuclear Waste Strategy Coalition held its bi-monthly conference call to provide an update to the ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members on the withdrawal status of the Yucca license application with the Nuclear Regulatory Commission and the U.S. Court of Appeals, an update of the litigation on the Nuclear Waste Fund fee, congressional budget activities with the continuing resolution for FY 2011, and the recent Blue Ribbon Commission meetings in New Mexico and Washington, D.C.
4. On February 4th the Blue Ribbon Commission on America's Nuclear Future held a closed meeting. Due to national security considerations the discussions and minutes of the meeting are not available for public disclosure.
5. On February 4th the Nuclear Energy Institute filed with the U.S. Court of Appeals for the District of Columbia their final amicus brief in support of the petitioners (Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford site in Washington, including intervenor-petitioner National Association of Regulatory Utility Commissioners) lawsuit against the federal government's actions on the Yucca Mountain license application.
6. On February 8th Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford Site in Washington filed with the U.S. Court of Appeals for the District of Columbia their reply brief explaining the reasons that the federal government must abide by the Nuclear Waste Policy Act (NWPA). On the same day the petitioners also filed with the Court its brief requesting it to order the Nuclear Regulatory Commission to comply with the NWPA and continue its license proceedings on the Yucca Mountain license application.
7. On February 8th the federal government filed with the U.S. Court of Appeals for the District of Columbia its motion to correct their addendum submitted to the Court on January 3rd to add statutes and regulations to its January 3rd proof brief. The motion was unopposed by the petitioners.
8. On February 8th the State of Nevada filed with the U.S. Court of Appeals for the District of Columbia its final brief supporting the federal government's actions for shutting down the Yucca Mountain Project. On the same day Nevada also filed with the Court a supplemental appendix of supporting documentation to its final brief.
9. On February 8th the counsels representing the Department of Energy, the Nuclear Regulatory Commission, Energy Secretary Chu and the President filed with the U.S. Court of Appeals for the District of Columbia their final brief in preparation for the Court's scheduled March 22nd date for oral arguments on the Yucca Mountain license proceedings.
10. On February 9th the Sustainable Fuel Cycle Task Force sent a letter to Dr. Holdren, Assistant to the President for Science and Technology and Director of the Office of Science Technology Policy. The letter takes issue with the President's March 9, 2009 memorandum on "the preservation and

promotion of scientific integrity” and Dr. Holdren’s December 17, 2010 memorandum on scientific integrity and their applicability to the Yucca Mountain repository program. A copy of their letter is attached. A nearly identical declaration on their Nuclear Waste Management and Scientific Integrity Statement is available under January’s monthly report. The updated version highlights that five of the nine affected counties in Nevada support Yucca Mountain, especially Nye County in which Yucca Mountain is located.

11. On February 8th Aiken County, South Carolina, the states of Washington and South Carolina, the business leaders from the Tri-City area near the Hanford site in Washington, and the petitioner-intervenor the National Association of Regulatory Utility Commissioners filed with the U.S. Court of Appeals for the District of Columbia both their revised addendum to their brief and reply brief in preparation for the Court’s March 22nd date for oral arguments on the Yucca Mountain license proceedings.
12. On February 10th the U.S. Court of Appeals for the District of Columbia ordered the petitioners’ (Aiken County, South Carolina, et al.,) February 1st motion to include a supplemental joint appendix and revised addenda.
13. On February 10th the Chair and Vice-Chair of the House of Representatives Committee on Science, Space and Technology, the Chair of the Subcommittee on Investigations and Oversight and the Chair of the Subcommittee on Energy and Environment sent a letter to the Chairman of the Nuclear Regulatory Commission (NRC), Dr. Jaczko, requesting in a spirit of openness the un-redacted version of the NRC’s Volume III of the Safety Evaluation Report on Yucca Mountain. A copy of their letter is attached.
14. On February 11th Energy Secretary Chu sent a letter to the Co-Chairs of the President’s Blue Ribbon Commission (BRC) on America’s Nuclear Future reinforcing and clarifying the initial guidance that he provided to the Commission. Dr. Chu emphasized that the BRC role is not to be a siting commission to counter some recent public presentations discussing specific sites and to ensure that the BRC will not include limited recommendations on Yucca Mountain. A copy of the letter is attached.
15. On February 14th the states of New York, Connecticut and Vermont filed a lawsuit with the U.S. Court of Appeals for the District of Columbia against the Nuclear Regulatory Commission’s temporary storage rule for spent nuclear fuel and waste confidence rule that were issued on December 23, 2010. Both rules extend the storage of used nuclear fuel at reactor sites to 120 years. The states contend that in promulgating these rules it violated numerous rules including the National Environmental Policy Act, the Administrative Procedures Act, and the Atomic Energy Act. The states argue that the NRC needs to perform environmental impact studies before extending the storage rule. A copy of the court filing is attached.
16. On February 14th the U.S. Chamber of Commerce issued a Key Vote Alert on the House of Representatives H.R. 1, the “Full Year Continuing Appropriations Act” emphasizing strong support for Section 1419 of the bill which would restrict the Nuclear Regulatory Commission’s ability on terminating the Yucca Mountain Project until the Commission overrules its Atomic Safety and Licensing Board’s decision to deny the Department of Energy’s motion to withdraw its Yucca Mountain license application. A copy of the alert is attached.
17. On February 16th the U.S. Nuclear Waste Technical Review Board held a meeting in Las Vegas to consider technical lessons that can be gained from the Department of Energy’s efforts to develop a permanent repository for spent fuel and high-level radioactive waste over the last two decades. The

Board will also review presentations on geologic disposal options for used nuclear fuel including deep borehole disposal. A copy of their agenda is attached.

18. On February 16th the National Association of Regulatory Utility Commissioners issued a resolution calling for the federal government to honor its obligations under the Nuclear Waste Policy Act (NWPA) and that storage of spent nuclear fuel at reactor sites up to 100 years is inconsistent with the NWPA. A copy of the resolution is attached.
19. On February 17th the Natural Resources Defense Council (NRDC) filed with the U.S. Court of Appeals for the District of Columbia a lawsuit against the Nuclear Regulatory Commission (NRC) challenging the NRC's Waste Confidence and Temporary Storage Rules. The NRDC contends that the rules violate the National Environmental Policy Act, the Administrative Procedures Act and the Atomic Energy Act.
20. On February 18th the Department of Energy (DOE) issued a draft Environmental Impact Statement (EIS) for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste. The EIS evaluated several disposal options such as a deep geological repository, intermediate depth boreholes, enhanced near surface trenches, and above grade vaults. Several disposal locations were analyzed including the Waste Isolation Pilot Project and the Los Alamos National Laboratory in New Mexico, the Savannah River Site in South Carolina, the Hanford Site in Washington, the Idaho National Laboratory, the Nevada Test Site, and four commercial disposal sites in the U.S. The DOE did not identify a preferred disposal alternative or location. A Federal Register Notice was published on February 25th starting a 120 day public comment period on the draft EIS. (Editorial Note: Maine Yankee has four concrete casks with GTCC wastes from the cut-up of the reactor internals at their storage installation in Wiscasset.)
21. On February 18th the Blue Ridge Environmental Defense League, Riverkeeper, Inc. and the Southern Alliance for Clean Energy filed a joint lawsuit against the Nuclear Regulatory Commission (NRC) and the United States of America. The petitioners contend that the Waste Confidence Update and the Temporary Storage Rule published by the NRC violate the Atomic Energy Act, the National Environmental Policy Act, and the Administrative Procedures Act. The petitioners are requesting the Court to reverse the NRC rules.
22. On February 22nd the Nuclear Regulatory Commission (NRC) Staff filed with the NRC's Atomic Safety and Licensing Board its certification of no additional witnesses to its Phase I National Environmental Protection Act contentions.
23. On February 23rd the Nuclear Waste Strategy Coalition (NWSC) held its second bi-monthly conference call to provide an update on the Department of Energy's withdrawal status of the Yucca license application with the Nuclear Regulatory Commission and the U.S. Court of Appeals, an update of the litigation on the Nuclear Waste Fund fees, current activities of the Blue Ribbon Commission, the litigation from states on the Nuclear Regulatory Commission's (NRC) waste confidence rule, the redacted form of the NRC's Safety Evaluation Report, Volume III on the Yucca Mountain geologic repository, congressional budget activities for FY 2011 and FY 2012. The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 47 organizations from 31 states.
24. On February 23rd the petitioners from Aiken County, South Carolina, the states of Washington and South Carolina, the business leaders from the Tri-City area near the Hanford site in Washington, and the intervenor-petitioner - National Association of Regulatory Utility Commissioners, filed with the U.S. Court of Appeals for the District of Columbia a proposed format for the presentation of the

petitioners' oral arguments scheduled for March 22nd. The counsels representing the federal government took no position on the petitioners' motion.

25. On February 23rd the State of Nevada and White Pine County in Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) their notifications of no additional witnesses to the Yucca Mountain license proceedings. On the same day the State of Nevada also filed with the ASLB its sixth notification of no additional party witnesses to its Phase I discovery list.
26. On February 24th the Chair of the House's Committee on Energy and Commerce and the Chair of the Subcommittee on Environment and Economy co-signed a letter sent to Energy Secretary Chu requesting a response to six questions they posed. The Chairs expressed their fiduciary responsibility to consumers paying into the Nuclear Waste Fund while "receiving nothing in return" and a "moral obligation to stop the flow of taxpayer dollars from the U.S. Treasury" due to the Department of Energy's "failure to meet its obligations". A copy of their letter is attached.
27. On February 25th Clark County, Nevada and the Joint Timbisha Shoshone Tribal Group filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board both their certifications of no additional party and other witnesses to the Yucca Mountain license proceedings.
28. On February 25th the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB) issued an Order denying the Department of Energy's motion to renew the temporary suspension of the proceedings associated with the Yucca Mountain license application. On the same day the ASLB issued another Order directing the NRC Staff to show cause why it should not provide the unredacted version of their Safety Evaluation Report, Volume III on Yucca Mountain. Copies of both Orders are attached.
29. On February 27th Inyo County, California filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board both fifth certifications of no additional party and no other witnesses to the Yucca Mountain proceedings.
30. On February 28th Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford Site in Washington filed with the U.S. Court of Appeals for the District of Columbia an amended motion for the Court to consider on the format for the oral arguments set for March 22nd. The federal government had no position on the petitioners' motion.

**Blue Ribbon Commission on America's Nuclear Future
Agenda**

February 1-2, 2011

**Marriott Metro Center
775 12th Street NW
Washington, DC**

Tuesday, February 1, 2011

9:00 a.m.	Open meeting/review agenda	Tim Frazier, DOE DFO
9:05 a.m.	Opening remarks	Honorable Lee Hamilton General Brent Scowcroft Commission members
9:15 a.m.	Roundtable discussion – establishing an environmentally and politically acceptable and socially legitimate facility siting process	

The roundtable participants will help the Commission explore key questions on facility siting that have been raised during Commission hearings, including:

- When should the process of developing a disposal system begin, and what are the key factors affecting that decision (e.g. cost, ethical considerations)?
- What types of siting process models should the Commission consider?
- Would an adaptive staged approach build or undermine social acceptance of the disposal system development process?
- What stages might an adaptive staged process entail?
- Are there alternate approaches the Commission should consider that would lead to greater social legitimacy while still providing the necessary protection of people and the environment?
- Is it appropriate to impose any sort of schedule on development of repositories, or is an open-ended approach preferable? What factors should be considered in making this decision?
- What is the relative importance of actually disposing of the wastes compared to developing and demonstrating the capability for such disposal?

- What institutional process should be used for selecting and licensing storage and disposal facility sites (considering the role of Congress, state, tribal and local governments, etc.)?
- What should be the roles of states, counties, tribes, and communities?
- What can we learn from past experiences in establishing storage and waste disposal sites and other controversial facilities in the U.S. and elsewhere?
- Should the U.S. seek multiple storage and disposal sites in parallel?
- At what level of detail should the Commission make recommendations? To what degree should we preserve flexibility for the new implementing organization?

Participants:

Dr. Eugene Rosa, Edward R. Meyer Distinguished Professor of Natural Resource and Environmental Policy, Thomas S. Foley Institute of Public Policy and Public Service, Washington State University

Dr. Tom Webler, Research Fellow, Social and Environmental Research Institute

Rick Moore, former Director, Industrial Siting Administration, State of Wyoming

Dr. Markku Lehtonen, Research Fellow, Sussex Energy Group, University of Sussex

11:30 a.m.

Lunch

2:00 p.m.

Roundtable discussion - Organization and scope of the nation's nuclear waste management entity

The roundtable participants will help the Commission explore key questions on nuclear waste program governance that have been raised during Commission hearings, including:

- What are the key tasks that need to be performed by the entity or entities responsible for long-term storage and disposal of used fuel and high-level wastes?
- What are the guiding principles and organizational values that should shape the ways in which the entity(ies) carry out its mission?
- What form of organizational structure is best suited to carry out those tasks consistent with the guiding principles and organizational values?
- Where should such an entity be housed (e.g. within a government agency, as a single-purpose government agency, as a quasi-

government organization, public-private partnership, or in the private sector)?

- How should the members of the governing body of the entity (if it has a board rather than a single CEO) be selected and under what criteria?
- Do organizational models and examples exist that the Commission should examine in making its recommendations?
- What form of oversight should the entity be subject to? – including Congressional control and guidance, regulatory requirements and third-party oversight

Participants:

John Koskinen, Non-Executive Chairman, Freddie Mac; former Deputy Director for Management, Office of Management and Budget; and former Chair, President's Council on Year 2000 Conversion

George Dials, Executive Vice President, B&W Technical Services Group; former Director, DOE Carlsbad Field Office; former President, TRW Parsons

Liz Dowdeswell, President, Council of Canadian Academies and former President, Nuclear Waste Management Organization (Canada)

Phil Sewell, Senior Vice President, American Centrifuge and Russian HEU, USEC

Dr. Tom Cotton, Vice President, Complex Systems Group and Senior Consultant to the Blue Ribbon Commission; former professional staff member, Office of Technology Assessment

4:00 p.m. Adjourn

Wednesday, February 2, 2011

8:30 a.m. Open meeting/review agenda Tim Frazier, DOE DFO

8:45 a.m. Roundtable discussion – Financial considerations

The roundtable participants will help the Commission explore key questions on funding nuclear waste management in the US that have been raised during Commission hearings, including:

- What is the current and projected future federal liability related to the inability to accept used commercial fuel?
- How much is the government spending to store used fuel and nuclear waste awaiting geologic disposal?

- How can the U.S. nuclear waste program be provided the level of financial assurance necessary to carry out the program?
- What types of arrangements might be acceptable to Congress and the Administration?
- What steps can the executive branch take administratively, without requiring legislation?

Participants:

Joe Hezir, Vice President, EOP Group

Michael Hertz, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice

Elgie Holstein, Senior Director for Strategic Planning, Environmental Defense Fund; former DOE Chief of Staff; former Associate Director of Natural Resources, Energy and Science, OMB

Dr. Mike Telson, Vice President – General Atomics and former DOE Chief Financial Officer

Kevin Cook, former Clerk, Energy and Water Development Appropriations Subcommittee, U.S. House of Representatives

10:00 a.m.	Coffee break	
10:15 a.m.	Continue roundtable discussion	
11:15 a.m.	Oral statements	Public
12:15 p.m.	Adjourn meeting	



Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

Sustainable Fuel Cycle Task Force Science Panel

February 9, 2011

Dr. John P. Holdren, Ph.D.
Assistant to the President
for Science and Technology
Director of the Office of Science Technology Policy
1725 17th Street, NW, Room 5230
Washington, DC 20502

Dear Dr. Holdren:

As the federal government moves into 2011 in a continuing resolution, actions taken by the Administration have brought to a standstill all scientific work related to solving the United States' program of high-level radioactive waste and spent nuclear fuel disposal.

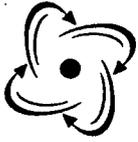
No viable alternative solution has been brought forward, let alone authorized by Congress, as a replacement for their directive of July 23, 2002, in Public Law 107-200, approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste policy Act of 1982.

There is no scientific reason for this situation; in fact the scientific soundness of the selection of Yucca Mountain was well on its way to being independently confirmed by the Nuclear Regulatory Commission (NRC) when the Administration stopped the program. Credible scientific support for the project is found throughout the community of knowledgeable scientists and engineers.

On December 17, 2010, you issued an important memorandum on scientific integrity. Your memorandum responded to a March 9, 2009 memorandum issued by President Obama articulating principles central to the preservation and promotion of scientific integrity. As Director of the Office of Science and Technology Policy, your office is responsible for ensuring the highest level of integrity in all aspects of the Executive Branches involved with scientific and technical processes.

We find that there is a conspicuous inconsistency between the intent of your memorandum and the DOE's and NRC's actions in suspending activities related to the licensing of Yucca Mountain.

Today, while the legislatively mandated license application sits in limbo, no technical authority has concluded either that Yucca Mountain is not suitable for a repository, or that the science supporting the license application is not sound. There are no published analyses done in conformance with the applicable requirements and standards that show that the Yucca Mountain site would not meet the safety standards. Statements purporting that the Yucca Mountain site does not meet the safety standards are found to be either not supported by analyses that conform to the regulations, or are based on selected portions of outdated analyses that are not consistent with the current requirements.



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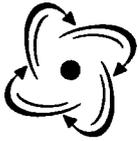
Dr. John P. Holdren, Ph.D.
Assistant to the President
for Science and Technology
Director of the Office of Science Technology Policy
February 9, 2011
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Moreover, presentations to the Blue Ribbon Commission, empanelled by the Secretary to articulate the “better way to deal with the wastes,” have revealed nothing new. This is not surprising, as the country debated the merits of alternative means of disposal of the wastes for decades before embarking on the path forward legislated by the Nuclear Waste Policy Act. Even the reprocessing options being studied today do not lead to a complete solution. Evaluations have shown that legacy wastes likely will not be reprocessed and will require repository disposal. All known advanced technology options have some residual high level radioactive waste. High-level radioactive wastes have no disposal path other than a repository.

Your memorandum also requires agencies to develop a culture of scientific integrity, and strengthen the actual and perceived credibility of government research. What better way is there to demonstrate these principles than to let the process move forward as Congress intended to happen? The NRC staff should be directed to issue the Safety Evaluation Report on post closure safety of Yucca Mountain. This would ensure that, as your memorandum directs, “data and research used to support policy decisions undergo independent peer review by qualified experts where feasible and appropriate and consistent with law.” It would also facilitate the free flow of scientific and technological information, another tenet of your memorandum.

A way must be found to restart the Yucca Mountain licensing process. A Congressionally directed solution is in place, and science, not just politics, should determine whether or not a license to construct a repository at Yucca Mountain is appropriate. State governors and other state and local elected officials perceive that without a repository, wastes now in 39 states could remain there indefinitely. Furthermore, without a repository, interim storage alone is likely to falter as it has each time it has been proposed in the past. There is nothing to indicate that state opposition to repository development would not be expected if the country sought another repository site.

There are, however, indications that local communities may be willing participants. In particular, Nye County, Nevada, has gone on record indicating its acceptance of the role assigned to it when Congress selected Yucca Mountain for repository development. In fact, five of the nine Nevada Counties identified as affected units of government, have opposed the DOE withdrawal of the Yucca Mountain License Application in submittals to the NRC Atomic Safety Licensing Board,



Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

Dr. John P. Holdren, Ph.D.
Assistant to the President
for Science and Technology
Director of the Office of Science Technology Policy
February 9, 2011
Page Three

For your information, please find attached a complete copy of our statement on Nuclear Waste Management and Scientific Integrity.

The Science Panel of the Sustainable Fuel Cycle Task Force was created to provide independent science based perspectives on issues related to a sustainable nuclear fuel cycle, and offers its services as a source of scientific information about all waste management technical and licensing issues, including Yucca Mountain. If we can be of assistance, please do not hesitate to contact us.

Sincerely,
Science Panel

Isaac Winograd

Isaac Winograd, Ph.D.

Wendell D. Weart

Wendell Weart, Ph.D.

Eugene H. Roseboom Jr

Eugene H. Roseboom Jr., Ph.D.

Charles Fairhurst

Charles Fairhurst, Ph.D.

D. Warner North

D. Warner North Ph.D.

Cc:

Chairman Jaczko, Chairman, US Nuclear Regulatory Commission
Kristine L. Svinicki, U.S. Nuclear Regulatory Commission Commissioner
George Apostolakis, U.S. Nuclear Regulatory Commission Commissioner
William D. Magwood, IV, U.S. Nuclear Regulatory Commission Commissioner
William C. Ostendorff, U.S. Nuclear Regulatory Commission
R. William Borchardt, Executive Director of Operations, U.S. Nuclear Regulatory Commission
James Dyer, Chief Financial Officer, U.S. Nuclear Regulatory Commission

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

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

February 10, 2011

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

President Obama entered office with a commitment to make his administration “the most open and transparent in history.”¹ In a Presidential Memorandum issued to Executive Branch agencies on his first day in office, the President said:

In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.²

It is in the spirit of these commendable principles that we request the immediate release of Volume III of the “Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada” (SER).

As you know, Volume III of the SER addresses post-closure scientific and technical issues associated with the storage of high-level waste, which provide the necessary underlying scientific evaluation for a national repository located at Yucca Mountain. Public disclosure of the report and the NRC staff’s key findings is necessary to ensure fully informed consideration of science and technology policy issues surrounding this matter. As Members of the Committee on Science, Space, and Technology, we are responsible for the examination and oversight of these topics.³

In a June 3, 2010 hearing before the Atomic Safety and Licensing Board, NRC staff testified that Volume III would be “completely drafted” no later than August 2010, and would be published shortly thereafter.⁴ Commissioner Ostendorff affirmed this timeline in later correspondence with

¹ Statement from the President on the First Time Disclosure Policy for White House Visitor Logs, September 4, 2009.

² “Memorandum for the Heads of Executive Departments and Agencies,”
<http://www.whitehouse.gov/the-press-office/freedom-information-act>

³ “Rule X 3(k): Organization of Committees” included in the *Rules of the House of Representatives* (112th Congress).

⁴ NRC ASLB, Transcript of Administrative Proceedings at p. 328-329, Docket No. 63-001 ASLBP 09-892-HLW-CAB04 (June 3, 2010).

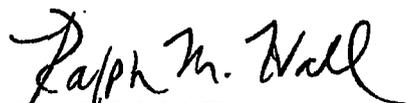
The Honorable Jaczko
February 10, 2011
Page two

Congress, noting that SER Volume III was transmitted to the Director of the NRC Office of Nuclear Material Safety and Safeguards for concurrence and authorization to publish on July 15, 2010.⁵

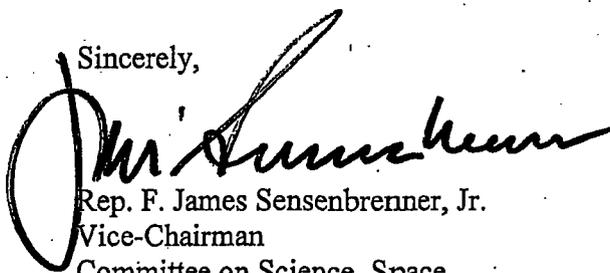
Disturbingly, however, in October 2010, you directed commission staff to halt all activities on the High Level Waste Program. This unilateral political decision appears to form the basis for the NRC's refusal to release SER Volume III. It shouldn't. Such actions are wholly inconsistent with the President's principles on openness and scientific integrity, and unnecessarily serve to obstruct and delay informed policy decisions regarding the future of the Yucca Mountain license application.

We recognize that Congress⁶ and other NRC commissioners⁷ have expressed serious concerns regarding the legality of and justifications for your order. These concerns are important and must be resolved, but their resolution should have no bearing on the Commission's ability to release SER Volume III in a timely manner.

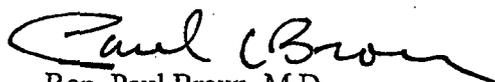
Accordingly, we request the Commission immediately publicly release Volume III of the SER. Further, provide to the Committee all documents (as defined by the attachment) related to the SER release, as well as an update on the current status of the remaining volumes by February 24, 2011. Should you have any questions, please contact Mr. Andy Zach, with the Energy and Environment Subcommittee, or Mr. Tom Hammond, with the Investigations and Oversight Subcommittee, at (202) 225-6371.



Rep. Ralph M. Hall
Chairman
Committee on Science, Space,
and Technology

Sincerely,


Rep. F. James Sensenbrenner, Jr.
Vice-Chairman
Committee on Science, Space,
and Technology



Rep. Paul Broun, M.D.
Chairman
Subcommittee on Investigations
and Oversight
Committee on Science, Space,
and Technology



Rep. Andy Harris
Chairman
Subcommittee on Energy and Environment
Committee on Science, Space,
and Technology

⁵ Letter from Commissioner Ostendorff to Representative Hastings, October 27, 2010.

⁶ Letter from Reps. Ralph Hall, Jim Sensenbrenner, Joe Barton, and Doc Hastings to NRC Chairman Jaczko, October 13, 2010 (copy attached).

⁷ Memorandum from Commissioner Ostendorff to Chairman Jaczko, Commissioners Svinicki, Apostolakis, and Magwood, "Disagreement With Staff Budget Guidance Under Fiscal Year 2011 Continuing Resolution." October 8, 2010.



The Secretary of Energy
Washington, DC 20585

February 11, 2011

The Honorable Lee Hamilton, Co-Chair
The Honorable Brent Scowcroft, Co-Chair
Blue Ribbon Commission on America's Nuclear Future
1000 Independence Avenue, SW
Washington, DC 20585

Dear Co-Chairs Hamilton and Scowcroft:

The Obama Administration believes that nuclear energy has an important role to play as America moves to a clean energy future. One of my goals as Secretary of Energy is to help restart America's nuclear industry, creating thousands of new jobs and new export opportunities for the United States while producing the carbon free energy we need to power America's economy.

Last year, the Administration announced a loan guarantee for what will become the first new nuclear power plant to begin construction in three decades and, with the existing and additional loan guarantee authority requested by the Administration, we could see six to nine reactors built in the United States. The Department has also launched a new Energy Innovation Hub to use one of the world's fastest supercomputers to accelerate upgrades to our existing reactor fleet and speed the development of next generation nuclear reactors.

As part of the Administration's effort to restart the nuclear industry, we are strongly committed to meeting the Nation's obligation for the safe, secure long-term disposal of used nuclear fuel and nuclear waste. That is why we brought together a highly respected panel of experts to make recommendations about the best approaches to dealing with the challenges of the back end of the nuclear fuel cycle.

As you know, the Blue Ribbon Commission is not intended to be a siting commission; instead, the Commission is taking a broad and long overdue look at America's approach to dealing with the nuclear fuel cycle and making recommendations on a better path forward. In the meantime, the Nuclear Regulatory Commission recently affirmed that on-site, dry cask storage of used nuclear fuel is safe for at least 60 years after a nuclear plant has been retired.

Nuclear power plants run for decades – many have had life extensions of up to 60 years authorized – while some isotopes in the used nuclear fuel rods will remain radioactive for millennia. Therefore, any workable policy to address the final disposition of used fuel and nuclear waste must be based not only on sound scientific analysis of the relevant geologies and containment mechanisms, but also on achieving consensus, including the



communities directly affected. It has been clear for many years that Yucca Mountain did not enjoy that kind of consensus. To the contrary, the Yucca project produced years of continued acrimony, dispute, and uncertainty. This conflict may have been inevitable from the beginning, when Yucca Mountain was selected by Congress in legislation that was not embraced by the state and community selected to host the geologic repository.

The only way to open the path toward a successful nuclear future for the United States was to turn the page and look for a better solution – one that is not only scientifically sound but that also can achieve a greater level of public acceptance than would have been possible at Yucca Mountain. It is time to move beyond the 25 year old stalemate over Yucca Mountain – especially since technology has advanced significantly during that time, giving us better options both in terms of science and public acceptance.

In establishing its charter, I asked the Blue Ribbon Commission "to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel, high-level waste, and materials derived from nuclear activities." It was an intentionally broad mandate, but one that specifically addressed the manner of making a decision of such consequence. For example, the charter asked the Commission to provide "options for decision-making processes for management and disposal that are flexible, adaptive, and responsive" as well as "options to ensure that decisions on management of used nuclear fuel and nuclear waste are open and transparent, with broad participation."

For these reasons, it is time for the Commission, the Congress, and the American people to move toward a better, more widely-supported, solution.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Chu". The signature is written in a cursive, flowing style.

Steven Chu

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

-----x
THE STATE OF NEW YORK,
THE STATE OF VERMONT, and
THE STATE OF CONNECTICUT,

Petitioners,

-against-

No. 11-____ -ag

UNITED STATES NUCLEAR
REGULATORY COMMISSION, and
UNITED STATES OF AMERICA,

Respondents.

-----x
**PETITION FOR JUDICIAL REVIEW OF
ADMINISTRATIVE AGENCY ACTION**

Pursuant to § 189 of the Atomic Energy Act, 42 U.S.C.
§ 2239, 28 U.S.C. §§ 2341-2344; the Administrative Procedure Act,
5 U.S.C. § 551 *et seq.*; and Rule 15 of the Federal Rules of
Appellate Procedure, the petitioners, the State of New York, by its
attorney, Eric T. Schneiderman, Attorney General of the State of
New York; the State of Vermont, by its attorney, William H.
Sorrell, Attorney General of the State of Vermont; and the State of

Connecticut, by its attorney, George Jepsen, Attorney General of the State of Connecticut, hereby petition this Court for review of the United States Nuclear Regulatory Commission's ("NRC") Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation rule ("Temporary Storage Rule") and affiliated Waste Confidence Decision Update, both issued December 23, 2010. *See* 75 Fed. Reg. 80132 (Dec. 23, 2010); 75 Fed. Reg. 80137 (Dec. 23, 2010) (both attached to this petition). The NRC acted arbitrarily, abused its discretion, and violated the National Environmental Policy Act, the Administrative Procedure Act, the Atomic Energy Act, the Commission's policies and regulations, the Council on Environmental Quality's regulations, and other applicable laws and regulations in promulgating these rules and findings.

The State of New York, jointly with the State of Vermont and the Commonwealth of Massachusetts, and the State of Connecticut, through their respective Attorneys General, submitted extensive comments on both the draft Temporary Storage Rule and the draft Waste Confidence Decision Update in

February 2009. The State of New York also submitted supplemental comments on February 9, 2010. As the NRC published notice of these rules in the Federal Register on December 23, 2010, this filing is within the Hobbs Act's 60-day statute of limitations and is timely. 28 U.S.C. § 2344.

Venue is appropriate within the D.C. Circuit pursuant to 28 U.S.C. § 2343. Therefore, the States of New York, Vermont, and Connecticut respectfully request that this Court review the NRC's Temporary Storage Rule and Waste Confidence Decision Update, vacate both, and remand the matter to the NRC for further analysis and the preparation and issuance of an environmental impact statement, and grant any other relief that the Court may deem just and appropriate.

Dated: February 14, 2011
New York, New York

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

BY: _____/s_____
MONICA WAGNER
Assistant Solicitor General
JANICE A. DEAN
JOHN J. SIPOS
Assistant Attorneys General

Office of the Attorney General
For the State of New York
120 Broadway
New York, New York 10271
Tel. (212) 416-6351
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monica.wagner@ag.ny.gov

WILLIAM H. SORRELL
ATTORNEY GENERAL

BY: _____/s_____
THEA SCHWARTZ
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Assistant Attorneys General
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05609-1001
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GEORGE JEPSEN
ATTORNEY GENERAL

BY: _____/s_____
ROBERT SNOOK
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106
Tel. (860) 808-5020
robert.snook@ct.gov

ATTACHMENT

U.S. Nuclear Regulatory Commission

**Consideration of Environmental Impacts of Temporary Storage of
Spent Fuel After Cessation of Reactor Operation rule
and
Waste Confidence Decision Update**

issued December 23, 2010

**75 Fed. Reg. 80132-37 (Dec. 23, 2010);
75 Fed. Reg. 80137-76 (Dec. 23, 2010)**

KEY VOTE ALERT!



Congressional & Public Affairs
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C.
20062-2600

202/463-5600

February 14, 2011

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports several provisions of H.R. 1, the "Full-Year Continuing Appropriations Act, 2011," which would implement important policy changes at various federal agencies. Moreover, the Chamber believes that the policy-related components of H.R. 1 could be improved by addressing other policy issues.

Specifically, the Chamber strongly supports existing provisions of H.R. 1, including:

- Section 1746, which would limit the ability of the Environmental Protection Agency (EPA) to regulate greenhouse gas emissions under the Clean Air Act. By actively moving forward with regulation of stationary greenhouse gas emitters, EPA has assumed the role of legislator and is infringing on responsibilities of Congress. EPA's actions have caused tremendous regulatory uncertainty for businesses, many of whom are afraid to invest in a project that, on account of its greenhouse gas emissions, might not receive a permit. There is broad consensus that the Clean Air Act is not an appropriate tool for addressing climate change. These provisions would help limit the damage EPA's regulatory overreach has caused.
- Section 1747, which would prohibit EPA from expanding the jurisdiction of the Clean Water Act (CWA) to waters the law was never intended to cover. Ignoring the fact that recent Congresses have failed to take action on legislation to expand the scope of the law by expanding the CWA's jurisdiction from "navigable waters of the United States" to all "waters of the United States," EPA has sought to implement a change in scope of the existing law through the regulatory process. In mid-2010, EPA declared the concrete-lined Los Angeles River—of *Grease* and *Terminator 2* car chase fame—to be "navigable." In coming weeks, EPA plans to release guidance further stretching its regulatory reach. Section 1747 is a sensible provision to limit the damage such a radical reinterpretation of the CWA could cause.
- Section 1419, which would limit the Nuclear Regulatory Commission's (NRC) ability to take any further action related to closure of the Yucca Mountain geologic repository until it reverses the pending Atomic Safety

Licensing Board's finding that the Department of Energy has no legal mechanism to withdraw its license application. The NRC has delayed its decision for more than seven months without providing a legal explanation. This inaction calls into question the Commission's integrity and creates greater uncertainty as to how the federal government will meet its legal obligation to collect and manage the tens of thousands of metric tons of commercial and defense waste stored in 39 states.

In addition, the Chamber urges you to include additional provisions to implement important policy changes. The Chamber would support amendments, if offered, to:

- Prevent the Department of Education from using any funds to implement the proposed gainful employment regulation. Such an amendment, which may be offered by Education and Workforce Committee Chairman Kline, would prevent the significant impact of the gainful employment rule: a chilling effect on students' access to post-secondary education, an estimated 100,000 jobs lost, and a \$5.3 billion burden on taxpayers.
- To limit funding for the National Labor Relations Board to prevent the Board from modifying the standard it uses to determine what constitutes an appropriate bargaining unit for union organizing and collective bargaining. The Board is considering significant changes to its policy in this area in the case *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, 356 NLRB No. 56 (Dec. 22, 2010). Although there is no evidence that existing policy has proven problematic, the Board is considering creating a new rule that would lead to the proliferation of fragmented and micro-units that unions could use to force their way in to an employer's business.
- To improve accountability congressional oversight of the Bureau of Consumer Financial Protection (BCFP) by ensuring that this Bureau, which was created in the recently enacted Dodd-Frank law, would be funded through the traditional appropriations process. Pursuant to Dodd-Frank, BCFP is funded with a virtually unconstrained appropriation. It is imperative that Congress assert its traditional oversight role to ensure that BCFP is accountable and is operating in an efficient and effective manner, and an amendment on this issue is expected to be offered by Rep. Garrett.

The Chamber will consider including votes on, or in relation to, these important policy issues—including votes on amendments—in our annual *How They Voted* scorecard.

Sincerely,



R. Bruce Josten



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
2300 Clarendon Boulevard, Suite 1300
Arlington, VA 22201

AGENDA
Winter Meeting
Wednesday, February 16, 2011
Marriott Suites Convention Center
325 Convention Center Drive
Las Vegas, NV 89109
(T) (702)-650-2000 (F) (702)-650-9466
Lake Mead/Red Rock Salons (17th floor)

- 8:30 a.m.** **Call to Order and Introductory Statement**
B. John Garrick, Chairman
U.S. Nuclear Waste Technical Review Board
- 8:45 a.m.** **Update on the Fuel-Cycle Technology Activities of the**
U.S. Department of Energy's Office of Nuclear Energy (DOE-NE)
Monica C. Regalbuto, Deputy Assistant Secretary for Fuel Cycle
Technologies
DOE-NE
- 9:15 a.m. Questions and Discussion*
- 9:30 a.m.** **Update on DOE's Research and Development Activities for Used**
Nuclear Fuel Disposition: Storage, Transportation, and Disposal
William J. Boyle, Director
Office of Used Nuclear Fuel Disposition Research and Development
DOE-NE
- 10:00 a.m. Questions and Discussion*
- 10:15 a.m.** **BREAK (15 minutes)**
- 10:30 a.m.** **Panel on Technical Experience Gained from DOE's Spent Nuclear Fuel**
and High-Level Radioactive Waste Management Efforts, to Date.
Moderator: B. John Garrick, NWTRB Chairman
- Panelists:**
Lake H. Barrett, Independent Consultant
Former Acting Director, DOE Office of Civilian Radioactive Waste
Management (DOE-RW) (1993, 1996 - 1999, 2000 - 2002)

George E. Dials, Executive Vice President
B&W Technical Services Group
Former President and General Manager of TRW Environmental Safety Systems, Inc., (Management and Operating Contractor for the DOE Yucca Mountain Project) (1999 – 2001); and Manager of the DOE Carlsbad Area Office with responsibility for managing the WIPP Project (1993 – 1998)

Christopher A. Kouts, Independent Consultant
Former Acting Director of DOE-RW (2009 - 2010)

John W. Bartlett, Independent Consultant, Retired (Invited)
Former Director, DOE-RW (1990-1993)

Each panel member has been invited to make an opening presentation and to address the following questions:

1. What technical advances were made during the development of the Yucca Mountain program that would be applicable in developing future programs for management of spent nuclear fuel and high-level waste in the United States?
2. What scientific research, or technical development work, should be undertaken now, or in the near term, to support future development of a repository for disposal of spent nuclear fuel and high-level waste?
3. How did different managerial approaches and changes in management approaches during the development of the Yucca Mountain program influence the technical design, planned operations and logistics?
4. What actions were taken to build public trust and confidence in scientific and technical activities and results? Which of these actions should be repeated for future repository programs and which should not? What, if anything, could have been done better?

11:30 a.m.

Discussion on Technical Experience Gained
Board and Panel members

12:30 p.m.

LUNCH (1 hour 15 minutes)

1:45 p.m.

Electric Power Research Institute (EPRI) Review of Geologic Disposal Options for Used Fuel and High-Level Radioactive Waste – Lessons Learned

Andrew G. Sowder, Senior Project Manager
Used Fuel and High-Level Radioactive Waste Management
EPRI

2:15 p.m. *Questions and Discussion*

2:30 p.m. **Deep Borehole Disposal: *Technical Concept and Performance Assessment Summary***

Patrick V. Brady, Senior Scientist
Sandia National Laboratories (SNL)

Deep Borehole Disposal: *Programmatic Benefits and Pilot Demonstration Path Forward*

S. Andrew Orrell, Director
Nuclear Energy & Fuel Cycle Programs
SNL

3:00 p.m. *Questions and Discussion*

3:15 p.m. **BREAK (15 minutes)**

3:30 p.m. **Panel on Geologic Disposal Options**
Moderator: Andrew Kadak, NWTRB Member

Panelists:

Ernest L. Hardin, Principal Member of the Technical Staff
Nuclear Fuel Cycle System Engineering & Integration Department
SNL

S. Andrew Orrell, Director of Nuclear Energy & Fuel Cycle Programs
SNL

Hank C. Jenkins-Smith, Professor of Political Science
University of Oklahoma

Ernest Hardin will discuss issues raised in the recent SNL Report on this subject (*Geologic Disposal Options in the USA*) and technical aspects of identifying suitable geologic media for a geologic repository. Andrew Orrell will join the discussion. Hank Jenkins-Smith will discuss public acceptance issues related to the process for identifying a geographic location for a repository.

4:15 pm. **Discussion on Geologic Disposal Options**
Board and Panel Members

5:00 p.m. **Public Comments**

5:30 p.m. **Adjourn**

***Resolution Expressing Disagreement with the Opinions that Spent Nuclear
Fuel Should be Stored at Reactor Sites for 100 Years***

WHEREAS, The Nuclear Waste Policy Act (NWPA) of 1982 found that previous federal efforts to devise a permanent solution for the problem of civilian (and defense) radioactive waste disposal “have not been adequate;” *and*

WHEREAS, The NWPA set the policy direction of disposal in a geologic repository, later selected in 1987 and re-affirmed in 2002 to be at Yucca Mountain, Nevada; *and*

WHEREAS, President Obama has decided that building a repository at Yucca Mountain is “not a workable option” and has taken steps to cancel further development of that site, leaving no clear alternative disposal path for spent-or used-nuclear fuel now stored at 72 locations with active and decommissioned reactors; *and*

WHEREAS, A Blue Ribbon Commission on America’s Nuclear Future has been appointed at the President’s direction to review alternative waste management and disposal alternatives and recommend a new disposition strategy; *and*

WHEREAS, Several developments may have the unintended consequence of implying that spent-nuclear fuel should remain at reactor storage sites for an extended period of time:

- A. The Nuclear Regulatory Commission issued a revised Waste Confidence Rule that the Commission has confidence that spent-nuclear fuel can be safely stored at either reactor sites or offsite for at least 60 years beyond the licensed life of the reactor.
- B. A report on the Future of the Nuclear Fuel Cycle study by an MIT team stated that “long-term managed storage of spent-nuclear fuel ... is believed to be safe for about a century,” while recommending a “move toward” centralized storage.
- C. A member of the Blue Ribbon Commission at an early meeting said, “There is no crisis here,” suggesting that spent fuel can be safely stored where it is for decades;
- D. Several groups appearing before the Blue Ribbon Commission over the past year who oppose Yucca Mountain have called for spent fuel to remain at reactor sites; *and*

WHEREAS, Long-term storage at reactor sites may have validity from engineering and safety standpoints, but it overlooks the facts that the federal government has been found financially liable and an estimate of that liability was last calculated to be over \$16.2 billion and would grow by \$500 million for each additional year of delay past 2020; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Winter Committee Meetings in Washington, D.C., considers that continued storage at reactor sites for an indefinite period is not what was planned when the reactors were built and runs counter to the NWPA; *and be it further*

RESOLVED, That the federal government must honor its obligations under the NWPA to dispose of spent-nuclear fuel in a permanent repository at the earliest possible date consistent with laws and regulations; *and be it further*

RESOLVED, That NARUC leadership conveys its position to the Secretary of Energy, the NRC, and the Blue Ribbon Commission that storage of spent fuel at reactor sites for up to one hundred years is not consistent with the Nuclear Waste Policy Act.

*Sponsored by the Committees on Electricity and Energy Resources and the Environment
Adopted by the NARUC Board of Directors February 16, 2011*

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 24, 2011

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

Dear Mr. Secretary:

We in Congress have a duty to follow progress on the laws we write and to change them where improvement is needed. In the case of the Nuclear Waste Policy Act (the Act) we have extra obligations: a fiduciary duty to consumers who, under the Act, have paid billions of dollars into the Waste Fund only—so far—to receive nothing in return; and a moral obligation to stop the flow of taxpayer dollars from the U.S. Treasury to pay damages to plant operators whose contracts with the Department of Energy (the Department) to transfer possession of nuclear waste material are breached.

To help us carry out these duties, please respond to the following questions and requests for information within fourteen days of the date of this letter.

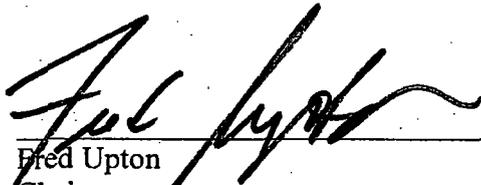
1. Do you agree that it is the responsibility of the United States Government, and the legal obligation of the Department of Energy, to take the steps necessary to accept nuclear waste from civilian generators?
2. Do you consider Yucca Mountain to be a geologically safe site for disposal of nuclear waste? After more than twenty years of the Department's work characterizing and preparing the site, and with a multi-agency record replete with validations that the site is geologically suitable for its statutory purpose, do you have information that it is not safe?
3. The Act directly establishes an Office of Civilian Radioactive Waste Management but you appear to have disbanded it. What is your specific legal authority to disband the Office in spite of its statutory establishment?

4. Do you agree that the Act requires the Department to file a license application for the Yucca Mountain Project? Do you understand that the duty to file, which was met by your predecessor, cannot continue to be met by withdrawing the application?
5. What is the total amount of damages in dollars paid to date to generating plant operators due to the Department's contractual failure to accept the high level waste?
6. What is the potential future legal and financial liability exposure for the U.S. if we have no Departmental facility to accept the waste? Please break down your projections by year. Please supply the Committee with all Departmental assessments and back-up analysis. Also, if you are aware of such assessments by any other office in the U.S. Government, or elsewhere, please list those.

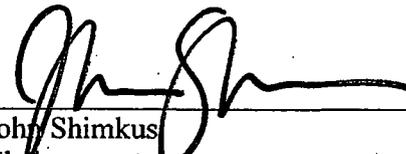
It would be difficult to draft legislation to make the Act more plain, specific, and mandatory than it already is. However, all three of these problems must be solved: the establishment of a permanent facility for accepting high level waste; the consumers paying out billions of dollars and receiving nothing in return; and the Treasury paying out billions of dollars in damages with no real end in sight due to the Department's failure to meet its obligations.

We appreciate your prompt attention to this request. Should you have any questions, you may contact David McCarthy of the Majority Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

February 25, 2011

MEMORANDUM AND ORDER

(Denying Motion to Renew Temporary Suspension of the Proceeding)

On January 21, 2011, the United States Department of Energy (DOE) moved to stay further proceedings before the Board through May 20, 2011, without prejudice to moving for additional stays.¹ Eureka County, Nevada and the Nuclear Energy Institute support DOE's motion.² Aiken County, South Carolina and Nye County, Nevada oppose the motion.³ The other parties either do not object or take no position.⁴

In support of its motion, DOE asserts that, after an earlier stay expired on June 29, 2010,⁵ the parties "have continued as though this proceeding were still suspended."⁶ According

¹ See U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 21, 2011) at 1 [hereinafter DOE Motion to Renew Stay].

² Id.

³ See Aiken County Response to U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 28, 2011) at 3.

⁴ DOE Motion to Renew Stay at 2.

⁵ See CAB Order (Granting Stay of Proceeding) (Feb. 16, 2010) (unpublished). The previous stay, which was entered without opposition, was in effect during the pendency of the Board's

to DOE, “[n]o party has requested to take any depositions in the six months since the suspension expired.”⁷ Rather, citing various uncertainties that might affect the future course of the proceeding, DOE asserts that “[a]ll parties appear to have implicitly understood that it makes little sense to devote scarce public and private resources to this proceeding until those uncertainties are resolved.”⁸ Moreover, DOE points out, “there is no looming discovery deadline or practical need to conduct discovery in the next 120 days.”⁹

DOE fails to demonstrate the threat of irreparable harm or any other reason for granting a stay.¹⁰ On the contrary, DOE’s request is not so much a motion to stay discovery—given that reportedly none is threatened or underway—as a request for the Board’s unqualified approval of the parties continued “collective inaction.”¹¹

The Board appreciates that the parties confront conflicting realities. On the one hand, although the Board has denied DOE’s motion to withdraw, continuation of the Yucca Mountain project remains subject to congressional funding and the possibility that our ruling might be reversed on appeal. Likewise, for reasons beyond the control of the Board or of most of the parties, there is currently no fixed deadline for the close of discovery and thus no hearing date. That is because, under Case Management Order #2, the current phase of discovery ends two

consideration of DOE’s motion to withdraw, and expired by its terms upon the Board’s June 29, 2010 order denying DOE’s motion. Id. at 1-2.

⁶ DOE Motion to Renew Stay at 2.

⁷ Id.

⁸ Id. at 3.

⁹ Id. at 6.

¹⁰ See U.S. Dep’t of Energy (High-Level Waste Repository: Pre-Application Matters), CLI-05-27, 62 NRC 715, 718 (2005).

¹¹ DOE Motion to Renew Stay at 3.

months after the NRC Staff issues Volume 3 of its Safety Evaluation Report (SER),¹² and the Staff has notified us that its schedule for that volume is indeterminate.¹³ On the other hand, when the Staff's SER becomes available, the Board intends to move this proceeding forward as expeditiously as circumstances permit.

Understandably, in the presently uncertain environment, the parties face difficult choices. Prudence and common sense may counsel careful allocation of resources. However, if the parties elect to abandon deposition discovery entirely, they should understand they do so at their own risk.

DOE's motion is therefore denied, without prejudice to the right of DOE or any other party to seek a stay or a protective order in the event that any party initiates discovery that it deems unduly burdensome.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 25, 2011

¹² See CAB Case Management Order #2 (Sept. 30, 2009) at 3 (unpublished).

¹³ See NRC Staff Notification Regarding SER Schedule (Nov. 29, 2010); NRC Staff Response to December 8, 2010 Board Order and Notification Regarding SER Volume 4 Issuance (Dec. 22, 2010).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

February 25, 2011

ORDER
(Directing NRC Staff's Show Cause)

On February 17, 2011, the NRC Staff filed a notification stating that, on that same date in response to a Freedom of Information Act request, it had "made available redacted copies of preliminary drafts of Volumes 2 and 3 of the SER."¹ Previously, the Staff notified the Board on the penultimate day of the Staff's schedule for issuing Volume 3 of the SER, that it would not meet its longstanding schedule and on December 8, 2010, the Board directed the Staff to provide an explanation of its last minute schedule change.²

Nothing in the Staff's December 22, 2010 purported explanation for its last minute schedule change, or in the various documents the Staff quotes and cites therein, sheds light on how SER Volume 3, on the day before it was long scheduled to be issued, comports with the Staff's characterization of SER Volume 3 being a preliminary draft. Accordingly, the Staff shall, by March 3, 2011, show cause why the Staff should not be ordered to place, in unredacted form

¹ NRC Staff Notification of Disclosure Pursuant to Freedom of Information Act (Feb. 17, 2011).

² See CAB Order (Addressing Nevada's Motion and Discovery Status) (Dec. 8, 2010) at 2 (unpublished). In that order, the Board noted that

the Staff had informed the Board at the January 27, 2010 case management conference that the Staff's schedule for issuing SER Volume 3 had slipped from September 2010 to November 2010, a date the Staff confirmed at the June 4, 2010 case management conference. The Staff had initially established the September 2010 issuance date for SER Volume 3 in its July 10, 2009 filing answering Board questions. Id. at 1-2 (internal citations omitted).

except for classified and safeguards information, Volume 3 of the SER in its LSN document collection as circulated draft documentary material in accordance with 10 C.F.R. § 2.1001 and its continuing obligation to "make a diligent good faith effort to include all after-created . . . documents as promptly as possible in each monthly supplementation of documentary material."³

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 25, 2011

³ Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) at 21 (unpublished). See CAB Case Management Order #1 (Jan. 29, 2009) at 2 (unpublished).

State Nuclear Safety Inspector Office

March 2011 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 123rd 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 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 are no longer included in the report. Instead, this information is available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and may redirect the reviewer to the website.

Independent Spent Fuel Storage Installation (ISFSI)

During March the general status of the ISFSI was normal. There were no instances of spurious alarms due to environmental conditions.

There were no fire or security related impairments in March. There were, however, three security events logged (SEL) for the month. Two of the SELs were due to transient environmental conditions and the other was due to a communication problem.

There were seventeen condition reports¹ (CR) for the month of March and they are described below.

- 1st CR: Documented that an in service fire extinguisher was overdue for its six year inspection. The extinguisher was removed from service and replaced with a spare.
- 2nd CR: Documented a channel failure on one 2-way radio. The failed unit was replaced and a backup unit was put in its place.
- 3rd CR: Was written to document a minor hydraulic leak on a man-lift. The spill was only two drops on the motorcycle's concrete pad. The spill was cleaned up and the unit sent off site for repair.
- 4th CR: Was written to document that a spill form was not used for the man-lift leak.
- 5th CR: Documented use of an out-of-revision form.
- 6th CR: Was written to document an internet problem with the loss of a signal to an offsite alarm station.
- 7th CR: Documented a security related issue and is not available for public disclosure.
- 8th CR: Documented the removal of guidance from a procedure prior to the guidance being incorporated into the procedure.

¹ 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.

- 9th & 10th CRs: Documented the use of an incorrect or out-dated form instead of one from the current procedure.
- 11th CR: Documented not using a form when one was required.
- 12th CR: Was written to document the sewer vault filling with ground water.
- 13th CR: Documented a door not closing properly. Upon further inspection the door was found to be operating properly.
- 14th CR: Documented a surveillance being performed not in accordance with the procedure. The surveillance was correctly performed the same day.
- 15th CR: Documented a pre-shift briefing not being covered with a person returning from medical leave. The pre-shift briefing was performed during the shift.
- 16th CR: Was written to document the use of another out of revision form instead of using one with the current procedure revision.
- 17th CR: Documented an error in filling out a work request. An incorrect number was entered for the work control number. The correct number was entered into the system.

Other ISFSI Related Activities

1. On March 1st Maine Yankee sent a letter to the Nuclear Regulatory Commission (NRC) requesting the NRC to update its distribution list for NRC correspondence. The Director of Regulatory Affairs for the three Yankee plants shutdown, Connecticut Yankee, Maine Yankee, and Yankee Rowe in Massachusetts was added to the service list.
2. On March 10th a suspicious vehicle was observed at the old East Access Road. The individual was taking photographs of wildlife. The Wiscasset Police Department was notified and intercepted the individual. The local law enforcement agency cautioned the individual and sent him on his way.
3. On March 14th Maine Yankee submitted its annual Decommissioning Funding Assurance Status Report to the Nuclear Regulatory Commission (NRC). The Report estimates that \$110.2 million will be necessary through 2023 for ISFSI operations and subsequent decommissioning of the facility. The current status of the fund at the end of 2010 stood at \$98.1 million. Over the past year the Fund gained \$2.4 million in revenue and the projected cost through 2023 decreased by \$9.7 million.
4. On March 24th Maine Yankee shipped a neutron source (Americium-Beryllium) to Radiation Safety and Control Services (RSCS) in Stratham, New Hampshire. The old neutron source was used to calibrate neutron meters. RSCS is a contract firm that supplies radiological services to Maine Yankee. The neutron source will augment RSCS's radiation detector calibration capabilities. The Maine Radiation Control Program also employs RSCS for calibrating some of its radiation detection instruments.
5. On March 28th another suspicious vehicle was observed on Old Ferry Road. The individual was taking pictures of the deer in the old ball field. The Wiscasset Police Department was notified, intercepted the individual, counseled him and sent him on his way.

Environmental

On March 30th the State performed its quarterly field replacement of its radiation monitoring devices, thermoluminescent dosimeters² (TLDs), near the ISFSI. When the results are received from the vendor, the information will be provided in April's monthly report.

² Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For more information, refer to the glossary on the Radiation Program's website.

Although air filters are collected on a biweekly basis from the roof of the Health and Environmental Testing Laboratory (HETL), they are not analyzed until the end of each calendar quarter. However, due to the nuclear crisis in Japan the State has increased its sampling of HETL's air filter to see if it could detect fallout from the Japanese event. Results of the State's sampling efforts will be presented in April's monthly report.

Maine Yankee Decommissioning

The preliminary working draft of the Confirmatory Summary Report was completed and submitted for review.

Groundwater Monitoring Program

On March 14th Maine Yankee submitted its fifth and final groundwater monitoring report. There is nothing to report on the radiological groundwater monitoring program. Due to the backlog of monthly reports the groundwater report will be evaluated and results reported in next month's report.

Other Newsworthy Items

1. On March 1st the Chairman of the Nuclear Regulatory Commission responded to Washington's Representative Doc Hastings' October 21, 2010, letter requesting a copy of the NRC Staff's Volume III of the Safety Evaluation Report on Yucca Mountain. Dr. Jaczko trusted that the redacted drafts of Volumes II and III satisfied Representative Hastings' October 21st request. A copy of the Chairman's letter is attached.
2. On March 1st Wisconsin Electric settled its lawsuit against the federal government on the Department of Energy's failure to take possession of its spent nuclear fuel in January 1998. Wisconsin originally filed the lawsuit in November of 2000. In December 2009 the Court of Federal Claims in Washington, D.C. awarded the company \$50 million. The Department of Justice (DOJ) appealed the decision, which is pending before the U.S. Court of Appeals. The DOJ offered to settle the lawsuit with the federal government paying \$45.5 million. A copy of the news release is attached.
3. On March 3rd the Nuclear Regulatory Commission Staff responded to the NRC's Atomic Safety and Licensing Board's February 25th order directing the Staff "to show cause why it should not be ordered to place Volume 3 of the Safety Evaluation Report in unredacted form....in its Licensing Support Network (LSN) collection as a circulated draft". The Staff presented arguments to demonstrate that it "should not be ordered to place an unredacted version of SER Volume 3 on the LSN because it is a preliminary draft, not a circulated draft".
4. On March 4th the Department of Energy (DOE) filed with the Nuclear Regulatory Commission (NRC) a motion to renew a temporary suspension of the license proceedings governing the Yucca Mountain license application. The filing with the Commission was prompted by the NRC's Atomic Safety and Licensing Board's February 25th denial of the DOE's January 21st request to renew a temporary suspension.
5. On March 4th Nuclear Regulatory Commission (NRC) Chairman Jaczko sent a letter to Representative Hall, Chair of the Committee on Science, Space, and Technology, regarding the Committee's February 10th letter requesting the public release of Volume III of the NRC's Safety Evaluation Report on the Yucca Mountain license application. Chairman Jaczko noted that, since

Volume III was in draft stage and therefore pre-decisional, the full draft is not available for public disclosure. However, a redacted form of the report is available. A copy of his letter is attached.

6. On March 7th the Nuclear Regulatory Commission's Atomic Safety and Licensing Board issued an Order denying the State of Nevada's reconsideration motion of two contentions, one legal and one safety, which were initially dismissed by the Board in the Yucca Mountain proceedings.
7. On March 7th the National Association of Regulatory Utility Commissioners filed with the U.S. Court of Appeals for the District of Columbia Circuit requesting relief from the imposition of a Nuclear Waste Fund fee for a non-existent disposal program.
8. On March 8th the U.S. Court of Appeals for the District of Columbia Circuit issued an Order granting the petitioner's motion on the format of the oral arguments for the Yucca Mountain proceedings. A copy of the Order is attached.
9. On March 8th the Nuclear Energy Institute (NEI) and sixteen of its member utilities across the country filed suit in the U.S. Court of Appeals for the District of Columbia Circuit requesting the Court to direct the Department of Energy to suspend its collection of the one-tenth of a cent per kilowatt-hour surcharge on electric bills. NEI contends the fee is not necessary since the Nuclear Waste Fund has a balance of more than \$24 billion and the Administration budgets for FY 2011 and 2012 did not include any funding for the disposal and management of the used nuclear fuel program.
10. On March 10th the Nuclear Waste Strategy Coalition (NWSC) held a conference call to update its members on the status of the Department of Energy's (DOE) withdrawal of its Yucca Mountain license application before the Nuclear Regulatory Commission (NRC) and the NRC's Atomic Safety and Licensing Board's Orders on Volume III of the NRC's Safety Evaluation Report of Yucca Mountain and denying the DOE's motion for a temporary suspension of the Yucca Mountain proceedings. Other updates addressed the oral arguments on the litigation case before the U.S. Court of Appeals for the District of Columbia Circuit, on the National Association of Regulatory Utility Commissioners' and the Nuclear Energy Institute's litigation of the Nuclear Waste Fund fee established under the Nuclear Waste Policy Act. Updates were also provided on the Blue Ribbon Commission's Committee and Subcommittee hearings, the FY 2011 Appropriations' Continuing Resolution and hearings on the FY 2012 Appropriations, and Congressional correspondence on Yucca Mountain. 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.
11. On March 11th Aiken County, South Carolina filed with the Nuclear Regulatory Commission its response requesting the Commission to reject the Department of Energy's (DOE) motion to renew the temporary suspension to the Yucca Mountain license proceedings. On the same day Nye County, Nevada also filed with the Commission its opposition to the DOE's motion to renew the suspension and requests that the motion be denied.
12. On March 14th the state of Washington filed with the U.S. Court of Appeals for the D.C. Circuit additional information in preparation for the March 22nd oral arguments date set by the Court on the Yucca Mountain license proceedings. A copy of their letter is attached.
13. On March 15th the counsel for the three business leaders from the Tri-City area of the Hanford Site in Washington sent a letter to U.S. Court of Appeals for the District of Columbia Circuit requesting

permission for his clients to listen in on the oral arguments through a telephone hook-up. A copy of the letter is attached.

14. In March the Blue Ribbon Commission (BRC) on America's Nuclear Future issued a document, entitled "What We've Heard". The report is a staff summary of the major themes that resonated in testimony and comments received. The purpose of the report is twofold. The first is to afford an opportunity to those that have provided input to confirm that their key messages have been heard or to highlight what the BRC may have overlooked. The second is to provide an avenue for those who are following, but have not commented, in the BRC's deliberations, an opportunity to raise issues that may have been overlooked. The main themes were summarized into the following seven broad categories:
 - Program Governance and Execution
 - Nuclear Waste Fee and Fund
 - Approach to Siting
 - Reactor and Fuel Cycle Technologies
 - Transport of Used/Spent Fuel and High-Level Wastes
 - Storage of Used/Spent Fuel and High-Level Wastes
 - Disposal System for High-Level Waste
15. On March 16th the quarterly conference call of the Federal Energy Regulatory Commission (FERC) Rate Case Settlement briefing took place with representatives from the states of Connecticut, Maine and Massachusetts. The briefing provided a status on the New England nuclear waste lawsuits against the federal government, the Yucca Mountain litigation case, and other national activities, such as the Blue Ribbon Commission, Congressional appropriation activities, the Nuclear Regulatory Commission, the Decommissioning Plant Coalition, and the National Association of Regulatory Utility Commissioners' and Nuclear Energy Institute's litigations against the Department of Energy's Nuclear Waste Fund fee. According to the discussion the New England Governor's Conference and the New England Council were still supportive of the shutdown plant issues.
16. On March 17th the U.S. Department of Justice (DOJ) sent a letter to the Clerk of the U.S. Court of Appeals for the D.C. Circuit taking issue with the March 14th letter from the petitioners stating that newspaper articles do not constitute authorities under the Court's rules. The DOJ also filed their attachments in preparation for oral arguments scheduled for March 22nd. A copy of the letter is attached.
17. On March 22nd the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments on the Department of Energy's plan to withdraw its license application before the Nuclear Regulatory Commission (NRC) to construct a high-level waste repository at Yucca Mountain in Nevada. The petitioners were represented by the State of Washington's Attorney General's Office and the Counsel for the Tri-City leaders near the Hanford Reservation in Washington. The Department of Justice represented the federal government. The Court questioned the petitioners' contentions on ripeness and why they should not wait for the NRC to act. On the defense side the Court questioned as to why the NRC's inaction should not be considered as a de facto decision and therefore challengeable by the petitioners.
18. On March 23rd the Nuclear Waste Strategy Coalition held a conference call to update its members on the status of the Department of Energy's withdrawal of its Yucca Mountain license application before the Nuclear Regulatory Commission, the oral arguments on the litigation case before the U.S. Court of Appeals for the District of Columbia Circuit, on the National Association of Regulatory Utility Commissioners' and the Nuclear Energy Institute's litigation of the Nuclear Waste Fund fee

established under the Nuclear Waste Policy Act. Further updates were provided on the Blue Ribbon Commission's Committee and Subcommittee hearings and the FY 2011 Appropriations' Continuing Resolution and hearings on the FY 2012 Appropriations.

19. On March 23rd the U.S. Nuclear Waste Technical Review Board announced that it will hold a meeting in Amherst, New York, to discuss the management and disposition of long term storage of vitrified high-level radioactive waste. The Board's visit will culminate a series of visits to government-owned facilities and how they manage and store high-level waste and used nuclear fuel. A copy of the notification is attached.
20. On March 24th the Nuclear Regulatory Commission's Atomic Safety and Licensing Board issued an Order dismissing four Nevada safety contentions. Nevada also agreed that it will not pursue another safety contention since it is a petition for a rule waiver as opposed to a safety contention. A copy of the order is attached.
21. On March 30th Chairman Jaczko of the Nuclear Regulatory Commission responded to the March 11th letter from the Chairman of the House Committee on Oversight and Government Reform. Dr. Jaczko considered the release of the draft pre-decisional partial Safety Evaluation Report, Volume III requested by Representative ISSA as inappropriate. However, he would release it under the condition the document is not available for public disclosure. A copy of the letter is attached.
22. On March 31st four of the five Commissioners for the Nuclear Regulatory Commission jointly sent a letter to Representative Issa relating that they had voted on March 24th-25th to direct the NRC Staff to send a letter in response to his request. Copies of both letters are attached.
23. On March 31st the Chair of the House Committee on Energy and Commerce sent letters to Energy Secretary Chu and Chairman Jaczko of the Nuclear Regulatory Commission notifying them that the Committee will be investigating the Administration's efforts to halt the Yucca Mountain Project. Both letters listed a number of questions and requests for information surrounding the decisions to terminate the nuclear waste repository in Nevada. Copies of both letters are attached.

March 1, 2011

The Honorable Doc Hastings
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Hastings:

I am writing in response to your October 21, 2010 letter regarding the U.S. Nuclear Regulatory Commission (NRC) staff's draft of Volume III of the Safety Evaluation Report (SER) for the U.S. Department of Energy's application to construct a high-level waste repository at Yucca Mountain. During the time since your letter was received, I understand that our Office of Congressional Affairs and your staff have had regular discussions about your request for this draft document. As a result of these conversations, copies of redacted drafts of both Volume II and Volume III of the SER were delivered to your office as soon as these became available on February 17, 2011. These redacted drafts were prepared in response to a Freedom of Information Act (FOIA) request that the agency had received the same week as your letter.

Neither of these volumes were completed and issued by the NRC before the agency transitioned to Yucca Mountain application review closure activities when Fiscal Year 2011 began. Therefore, the documents are pre-decisional drafts that did not complete staff management or legal review. Because of the Commission's role as an appellate body for decisions made by the NRC's Atomic Safety and Licensing Board during hearings on the Yucca Mountain application that would focus on findings in the SER, neither my colleagues nor I have access to these drafts in their unredacted form. The NRC staff is currently working very hard to continue thoroughly documenting their technical reviews so that the work that was accomplished is documented and available to the public.

I trust that having these redacted drafts and the fact that these are now publicly available satisfies your request. Thank you for your interest in the NRC and our work. I would be happy to discuss this matter with you directly, either by phone or in person as your schedule allows. Please feel free to contact me.

Sincerely,

/RA/

Gregory B. Jaczko

[Close](#)

Wisconsin Electric receives \$45.5 million in used fuel settlement

The United States federal government will pay \$45.5 million to settle a lawsuit filed by Wisconsin Electric over what it says is the Department of Energy's failure to dispose of high-level radioactive waste from the Point Beach nuclear plant. The 1982 Nuclear Waste Policy Act was created to allow utilities to begin taking used nuclear fuel from nuclear power plants for disposal in a permanent repository, which was expected to be Yucca Mountain in Nevada.

Wisconsin Electric, part of WE Energies, filed the lawsuit in the U.S. federal claims court in November 2000.

Wisconsin Electric intends to return the \$31 million net proceeds after litigation costs to its customers, and has written to the Wisconsin Public Service Commission to enable it to set up the necessary mechanisms, according to World Nuclear News.

Wisconsin Electric sold the Point Beach nuclear power plant to FPL Energy in 2007.

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<http://www.powergenworldwide.com/powergenportal/en-us/index/display/generic-article-tools-template.articles.powergenworldwide.nuclear.waste-and-decommissioning.2011.02.Wisconsin-Electric-used-fuel.html>

March 4, 2011

The Honorable Ralph M. Hall
Chairman, Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your Committee's interest in the Nuclear Regulatory Commission's (NRC) actions regarding the Yucca Mountain license application. I am providing the agency's response to your letter dated February 10, 2011, requesting the public release of Volume III of the Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada (SER Volume III). I am pleased to inform you that in response to an earlier Freedom of Information Act request, the NRC released redacted versions of SER Volumes II and III on February 17, 2011.

These SER volumes were in a draft stage when the agency transitioned to closure activities associated with the Yucca Mountain license application five months ago. Because the review of these documents had not been completed by pertinent NRC staff, portions related to preliminary staff findings and conclusions were appropriately redacted as pre-decisional material prior to their public release consistent with FOIA law.

Because of the Commission's role as an appellate body for decisions made by the NRC's Atomic Safety and Licensing Board during hearings on the application that would focus on findings in the SER, not even my colleagues and I have had access to these predecisional draft staff documents in their unredacted form. Release of those portions not already made public through the FOIA process would complicate and extend an already complex proceeding involving more than three hundred admitted contentions. It would create confusion associated with any changes between the draft and potential final versions and could thus be expected to invite a stream of needless litigation regarding the basis for any changes. Historically, members of Congress and its committees have rarely requested these types of pre-decisional draft documents which pertain to license applications that are related to an adjudication.

I can assure you that the NRC staff is currently working to thoroughly document its technical review so that the work of the agency is well documented and available to the public.

- 2 -

Thank you for your interest in the NRC and our work. I understand that the Office of Congressional Affairs and your staff have regular discussions and we will continue to update them about our work. I would be happy to discuss this matter with you directly, either by phone or in person as your schedule allows. Please feel free to contact me.

Sincerely,

/RA/

Gregory B. Jaczko

cc: Representative Eddie Bernice Johnson

Identical letter sent to:

The Honorable Ralph M. Hall
Chairman, Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515
cc: Representative Eddie Bernice Johnson

The Honorable F. James Sensenbrenner, Jr.
Vice-Chairman, Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515
cc: Representative Eddie Bernice Johnson

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on Investigations
and Oversight
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515
cc: Representative Donna Edwards

The Honorable Andy Harris
Chairman, Subcommittee on Energy
and Environment
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515
cc: Representative Brad Miller

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050

September Term 2010

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

Filed On: March 8, 2011 [1296886]

In re: Aiken County,

Petitioner

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

ORDER

Upon consideration of the amended motion of petitioners for consideration of format for oral argument, it is

ORDERED that the motion be granted to the extent that the following times are allotted for the oral argument of this case scheduled for March 22, 2011, at 9:30 A.M.:

Petitioners	--	20 Minutes (may divide oral argument time as they see fit)
Respondent	--	20 Minutes

The panel considering these cases will consist of Chief Judge Sentelle, and Circuit Judges Brown and Kavanaugh.

Form 72, which may be accessed through the link on this order, must be completed and returned to the Clerk's office by March 15, 2011.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

The following forms and notices are available on the Court's website:

Notification to the Court from Attorney Intending to Present Argument (Form 72)



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117 • Olympia, WA 98504-0117 • (360) 586-6770

March 14, 2011

Mark Langer, Clerk
U.S. Court of Appeals, DC Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

RE: *In Re Aiken County*,
U.S. COA, DC Circuit No. 10-1050 consolidated with 10-1052, 10-1069, 10-1082

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), the consolidated Petitioners submit the following supplemental authorities:

1. Frederic J. Frommer, *NRC to end work on nuke site*, Washington Times, February 2, 2011
2. Steve Tetreault, *NRC chairman says Yucca Mountain closeout to include license panel*, Las Vegas Review-Journal, February 2, 2011 (relevant portions identified)
3. Memorandum from Catherine Haney, Director of the Office of Nuclear Material Safety and Safeguards, to the Nuclear Regulatory Commission, *Update on the Yucca Mountain Program* (Feb. 4, 2011 as revised Mar. 1, 2011), including attached staff non-concurrences (relevant portions identified)
4. Excerpts from U.S. Nuclear Regulatory Commission, Publication No. NUREG-1100, FY 2012 Congressional Budget Justification, Vol. 27 (Feb. 2011) (NRC Budget) (relevant portions identified)
5. Excerpts from Department of Energy, Publication No. DOE/CF-0063, FY 2010 Congressional Budget Request, Vol. 7 (Feb. 2011) (DOE Budget) (relevant portions identified)
6. Memorandum from Daniel J. Graser, Licensing Support Network Administrator, to Judges Moore, Ryerson, and Wardwall of the Atomic Safety and Licensing Board, *Budgetary Support for Licensing Support Network* (Feb. 18, 2011)

Mark Langer
March 14, 2011
Page 2

These authorities go to the issues of finality, ripeness for review, administrative exhaustion, and primary jurisdiction with respect to the Respondents' decisions and actions (including those by Respondent Nuclear Regulatory Commission), as discussed in the Brief of Petitioners at 27-34; the Respondents' Response Brief at 30-34 and 36-46; and the Petitioners' Reply Brief at 8-12. Specifically, the authorities provide recent evidence of the extent to which the decision to reject the Yucca Mountain repository site and the statutory process for developing that site has been fully implemented by Respondent Department of Energy (which has already eliminated the administrative program supporting repository licensing and development and is planning "site remediation" activity in 2011), and is being implemented by Respondent NRC (which has terminated its own license review activity and is eliminating the hearing board responsible for adjudicating the Yucca Mountain license application).

Sincerely,

s/ Andrew A. Fitz

ANDREW A. FITZ
Senior Counsel
(360) 586-6752

AAF:dmm

Enclosures

cc: All Parties of Record

K&L Gates LLP
1601 K Street NW
Washington, DC 20006-1600
r 202.778.9000 www.klgates.com

March 15, 2011

Barry M. Hartman
D 202.778.9338
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barry.hartman@klgates.com

Mark J. Langer
Clerk of Court
U.S. Court of Appeals for District of Columbia
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Fifth Floor
Washington, DC 20001-2866

ATTN: Shana Thurmond

Re: In Re Aiken County, No. 10-1050

Dear Mr. Langer:

I am writing on behalf of my clients, Robert Ferguson, William Lampson and Gary Petersen, plaintiffs in *Ferguson v. Obama et al.*, No. 10-1052 (consolidated under the case noted above). This case is scheduled for oral argument on Tuesday, March 22, 2011 as the third case in the morning.

My clients are individuals, each of whom has lived and worked in the state of Washington near a site that gives them standing to bring this action. Two of them will not be able to attend the argument, and it is unclear at this time if the third will be able to attend. One client is over 70 and recently had back surgery, so a flight across the country is not advised at this time. They have asked whether it might be possible for those that cannot attend to listen to the argument via a telephone hook up. I believe we can arrange to have them in one, and at worst, two locations. They understand and agree that they cannot and will not record it, nor will they permit others to listen without leave of the Court.

I have notified counsel to the parties and none object to this request.

Thank you very much for your consideration.

Respectfully submitted,



Barry M. Hartman

Counsel to Robert Ferguson, William Lampson
and Gary Petersen



Environment and Natural Resources Division

EJDURKEE 514-4426
90-13-5-13056

Appellate Section
P.O. Box 23795
L'Enfant Plaza Station
Washington, DC 20026-3795

Telephone (202) 514-2748
Facsimile (202) 353-1873

March 17, 2011

Mr. Mark Langer
Clerk, U.S. Court of Appeals
For the D.C. Circuit
333 Constitution Ave., NW
Washington, D.C. 20001

Re: *In re Aiken*, Nos. 10-1050, 10-1052, 10-1069, 10-1082; Response to Petitioners'
March 14, 2011, letter

Dear Mr. Langer:

Invoking Fed.R.App.P. 28(j), petitioners filed a March 14, 2011, letter with this Court. The letter points to news articles and government budget documents concerning the proposed Yucca Mountain repository site, and says that these materials "go to" finality, ripeness, exhaustion, and primary jurisdiction issues.

News articles and budget documents are not "authorities" within Rule 28(j)'s meaning. They are not properly before this Court. *E.g., Utah v. Dept. of Interior*, 535 F.3d 1184, 1196 n.7 (10th Cir. 2008).

Regardless, these materials - which petitioners characterize as "recent evidence" that the "decision to reject" the Yucca site "has been fully implemented" by DOE and "is being implemented" by NRC - merely reflect the long-known reality that DOE has sought to withdraw its application and the Obama Administration has proposed no further Yucca funding in fiscal year 2012. It is prudent for government agencies to plan for that eventuality now. Insofar as petitioners suggest that recent budget developments show unlawful agency action, the claim is not within this Court's jurisdiction. *See Public Citizen v. NRC*, 845 F.2d 1105, 1109-1110 (D.C. Cir. 1988); *Riffin v. Surface Transp. Bd.*, 331 F. Appx. 751, 752 (D.C. Cir. 2009) (collecting cases adhering to incurably premature doctrine). A fresh petition for review, filed after the disputed agency action, would be necessary. Direct-review actions in this Court rest on an existing record. They are not the same as ordinary civil actions, where the record is dynamic and claims can be added as events warrant.

The Yucca Mountain licensing proceeding remains pending before the NRC. Recently, NRC's hearing tribunal, the Atomic Safety and Licensing Board, issued a decision refusing to suspend licensing proceedings and has made other rulings. Attachments A-D. DOE has asked the Commission to issue a temporary suspension. The Commission has not made a decision on whether to issue such a suspension or a decision on whether the Board rightly refused to allow DOE to withdraw its application.

Sincerely,

/s/ John F. Cordes
Counsel for Nuclear Regulatory Commission

/s/ Ellen J. Durkee
Counsel for Department of Energy



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
2300 Clarendon Boulevard, Suite 1300
Arlington, VA 22201
703-235-4473

March 23, 2011
For Immediate Release

Karyn D. Severson
External Affairs

NWTRB to Discuss Management and Disposition of West Valley Demonstration Project Nuclear Wastes

The U.S. Nuclear Waste Technical Review Board will hold a public meeting in Amherst, New York, on Wednesday, April 27, 2011, to discuss the West Valley Demonstration Project (WVDP). Currently planned are presentations on the WVDP by representatives of the New York State Energy Research and Development Authority and the U.S. Department of Energy's (DOE) Office of Environmental Management. Other issues expected to be discussed include previous reprocessing and vitrification activities at the WVDP; long-term onsite storage of vitrified high-level radioactive waste (HLW); determination of waste classification of the melter from the vitrification facility; and the final Environmental Impact Statement and *Record of Decision* on decommissioning and/or long-term stewardship at the WVDP. Also planned are presentations and a panel discussion on the 2008-9 study on Quantitative Risk Assessment of the State Licensed Radioactive Waste Disposal Area.

The meeting will be held at the Buffalo Marriott Niagara; 1340 Millersport Highway; Amherst, New York 14221; (tel) 716-689-6900; (fax) 716-689-0483. A block of rooms has been reserved at the hotel for meeting attendees. *To ensure receiving the meeting rate, room reservations must be made by April 8, 2011.*

Reservations can be made online at www.buffaloniagaramarriott.com using the following procedure: In the "Rates & Availability" box, enter the reservation dates; click "Special Rates & Awards"; enter USIUSIA under "Group Code"; click on "FIND"; and make your reservation when the Group block appears. To reserve by phone, call 800-334-4040 and indicate that you are attending a meeting under the Group block name "NUCLEAR WASTE."

A detailed agenda will be available on the Board's Web site at www.nwtrb.gov approximately one week before the meeting. The agenda also may be obtained by telephone request at that time.

The meeting will be open to the public, and opportunities for public comment will be provided. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. It may be necessary to set a time limit on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on library-loan in paper form from Davonya Barnes of the Board's staff after May 18, 2011.

The Board was established as an independent federal agency to provide ongoing objective expert advice to Congress and the Secretary of Energy on technical issues and to review the technical validity of DOE activities related to implementing the Nuclear Waste Policy Act. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. Board reports, correspondence, congressional testimony, and meeting transcripts and materials are posted on the Board's Web site.

The Board's visit to West Valley will complete a series of visits to federal facilities where government-owned HLW and spent nuclear fuel are managed and stored. As part of the Board's ongoing technical evaluation of DOE activities, the Board intends to develop a report to Congress and the Secretary of Energy containing Board findings, conclusions, and recommendations based on technical information gathered from visits to the Hanford site in Washington, Idaho National Laboratory in Idaho, the Savannah River Site in South Carolina, and the West Valley site in New York.

For information on the meeting agenda, contact Karyn Severson. For information on lodging or logistics, contact Linda Coultry. They can be reached at 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201-3367; (tel) 703-235-4473; (fax) 703-235-4495.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of
U.S. DEPARTMENT OF ENERGY
(High Level Waste Repository)

Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04
March 24, 2011

ORDER
(Dismissing Contentions)

In LBP-10-22, CAB-04 resolved ten Phase I legal issues raised by admitted contentions sponsored by the State of Nevada (Nevada) and the Nuclear Energy Institute (NEI) and denied two Nevada rule waiver petitions.¹ The Board also instructed the affected parties to seek agreement on a stipulation regarding the effects of its rulings on admitted contentions.² On behalf of the affected parties, the Department of Energy (DOE) filed the joint stipulation of DOE, the NRC Staff, Nevada, and NEI.³ The stipulation identifies the contentions that the parties agree are subject to dismissal and the contentions on which the parties do not agree as to the effect on them of the Board's legal rulings.⁴

¹ See LBP-10-22, 72 NRC __, __ (slip op. at 5-36) (Dec. 14, 2010).

² LBP-10-22, 72 NRC at __ (slip op. at 36).

³ U.S. Department of Energy's Joint Report in Response to CAB Orders of December 8, 2010 and LBP-10-22 (Jan. 21, 2011) [hereinafter Joint Report].

⁴ See Joint Report, Attachment, Joint Stipulation Among DOE, Nevada, NEI and NRC Staff Regarding Admitted Contentions Affected by LBP-10-22 (Jan. 21, 2011).

The affected parties agree that four of Nevada contentions, NEV-SAFETY-041, NEV-SAFETY-146, NEV-SAFETY-169, and NEV-SAFETY-201 are subject to dismissal.⁵ The Board agrees, accepts the joint stipulation as to those contentions, and dismisses NEV-SAFETY-041, NEV-SAFETY-146, NEV-SAFETY-169, and NEV-SAFETY-201.⁶

Finally, with regard to the remaining Phase I contentions identified by the parties in the joint stipulation⁷ as directly or indirectly affected by the Board's rulings in LBP-10-22, DOE or the NRC Staff should timely file dispositive motions seeking appropriate relief, such as a motion to dismiss a contention in whole or in part.⁸ Because the parties already have fully briefed the legal issues resolved by the Board in LBP-10-22 and filed memoranda regarding the effect of those rulings on the admitted contentions of NEI and Nevada, any such motions should be very brief.⁹

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 24, 2011

⁵ Id. at 2-3, 5.

⁶ The joint stipulation also recites that the parties agree that Nevada will not pursue NEV-SAFETY-203 before the CAB. Id. at 6. In denying Nevada's rule waiver petition in LBP-10-22, the Board stated that "[a]lthough, styled as a contention, NEV-SAFETY-203 is actually a petition for a rule waiver pursuant to 10 C.F.R. § 2.335." LBP-10-22, 72 NRC at ___ (slip op. at 4). So that there will be no misunderstanding in tracking the hundreds of contentions in this proceeding, NEV-SAFETY-203 is dismissed.

⁷ I.e., NEV-SAFETY-009, -010, -011, -012, -013, -019, -130, -149, -161, -162, -171, -202; NEI-SAFETY-05, -06.

⁸ For purposes of such motions, the time period prescribed in 10 C.F.R. § 2.323(a) shall not be applicable.

⁹ It is the Board's expectation that any such motion normally would not exceed two or three pages per challenged contention.

NOT FOR PUBLIC DISCLOSURE



CHAIRMAN

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

March 30, 2011

The Honorable Darrell E. Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

You asked in a March 11, 2011 letter for a significant number of U.S. Nuclear Regulatory Commission (NRC) internal documents including draft pre-decisional versions of Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain license application, as well as adjudicatory information associated with that proceeding. The former is a document that not even my fellow Commissioners or I have had access to in an un-redacted form, and the confidentiality of the latter is crucial for deliberations to be able to be held in an environment free from political interference. Providing you with this type of information is inconsistent with decades of established Commission practice designed to preserve the agency's fundamental ability to conduct fair and impartial deliberations.

Although I do not believe it is appropriate to provide the draft predecisional partial SER, a majority of the Commissioners are willing to do so with the understanding that it is being provided for your use but not for public release. Therefore, that document is provided in a sealed enclosure to this letter. Drafts of our technical review documents are typically not released publicly because they state only the preliminary, rather than final, staff findings. Until they are fully vetted by the NRC staff, the findings cannot be the basis for any regulatory positions taken by the NRC staff. The draft predecisional SER document is not currently part of the official hearing record. The staff determined that the draft did not meet the criteria for inclusion in the Licensing Support Network, a determination which the Licensing Board has asked the staff to explain. Any unauthorized public release of this document would establish a dangerous precedent, setting the agency up to provide potentially incorrect or misleading information to the public, and to litigate multiple draft positions in our hearing process. This would result in an inappropriate and unworkable licensing process for everything from license renewals for operating reactors to the potential licensing of new reactors and other facilities.

The impropriety of Congressional influence over matters which are the subject of agency adjudications was explored in *Pillsbury v. FTC*, 354 F.2d 952 (5th Cir. 1966), which established what is commonly referred to as "the Pillsbury doctrine." That doctrine established that parties to adjudications have the right to hearings that are not tainted by Congressional interference. To avoid Congressional pressure on agency decision-makers that could impermissibly taint an administrative adjudication, the Commission does not generally respond to requests for information regarding adjudicatory matters. In this politically charged proceeding, I believe that any disclosure beyond your staff of the redacted portions of the draft SER would taint the high-level waste proceeding because of the multiple number of parties and a possible appearance of an effort to exert political influence to force the agency to disclose draft findings still subject to senior staff review.

NOT FOR PUBLIC DISCLOSURE

NOT FOR PUBLIC DISCLOSURE

-2-

It is important that there is complete and accurate information released about the facts of this matter, not draft or incomplete documents. My hope for the sake of the efficiency of all the agency's ongoing and future licensing actions and the integrity of this specific hearing, is that you and your staff will respect these concerns about established safeguards to the deliberative process, and not take any action that could set a dangerous precedent going forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. B. Jaczko', with a long horizontal flourish extending to the right.

Gregory B. Jaczko

Enclosure: As stated

cc: Representative Elijah E. Cummings

NOT FOR PUBLIC DISCLOSURE



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

COMMISSIONER

March 31, 2011

The Honorable Darrell E. Issa
Chairman, House Committee on Oversight
and Government Reform
United States House of Representatives
Washington, DC 20515

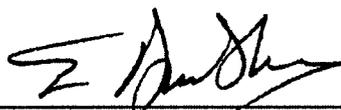
Dear Chairman Issa:

We have been informed that, on March 30, 2011, U.S. Nuclear Regulatory Commission Chairman Jaczko responded to your request, dated March 11, 2011, that NRC provide an unredacted version of Volume III of the draft Safety Evaluation Report related to the Yucca Mountain license application. We write to inform you, however, that we four members of the Commission voted on March 24-25, 2011, to direct staff to send the enclosed letter in response to your request.

Sincerely,



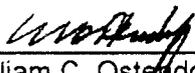
Kristine L. Svinicki



George E. Apostolakis



William D. Magwood, IV



William C. Osterdorff

March 25, 2011

The Honorable Darrell E. Issa
Chairman, House Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

In response to your letter of March 11, 2011, regarding the Committee's investigation into the Yucca Mountain project, the Commission has directed me to provide the unredacted version of Volume III of the Safety Evaluation Report for the Yucca Mountain license application. Volume III in unredacted form is not publicly available at this time, and the Commission requests that the Committee hold it in confidence.

The Staff considers this document pre-decisional. None of the Commissioners have had access to it in its unredacted form. The Commission has received copies of only those portions that were released to the public as a result of a Freedom of Information Act request.

The agency continues to produce documents responding to the remaining requests in your March 11 letter, and will provide those to the Committee as you have requested.

Respectfully,

Rebecca L. Schmidt

Director
Office of Congressional Affairs

Encl. As stated

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

March 31, 2011

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

Dear Secretary Chu:

We appreciate your March 11, 2011, response to our February 24, 2011, letter requesting information regarding your position on Yucca Mountain. We write today to notify you that the Committee on Energy and Commerce and its Subcommittee on Environment and the Economy are investigating the decision making related to efforts to terminate the high-level waste repository program at Yucca Mountain.

At this time, we seek information regarding decisions that were made (a) to withdraw the license application that is currently pending before the Nuclear Regulatory Commission (NRC) for authorization to construct a repository at Yucca Mountain and (b) to terminate Department of Energy (DOE) support for the Yucca Mountain repository program while the withdrawal petition (and related federal litigation) remains unresolved. We also seek all of the information necessary to evaluate DOE's adherence to its statutory obligations and responsibilities under the Nuclear Waste Policy Act of 1982, as amended, and to determine whether DOE is taking actions that will increase the Department's or taxpayer financial liabilities.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following within two weeks of the date of this letter. We also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is November 4, 2008, to the present.

1. Please explain your role, as Secretary of Energy, in the decision to abandon DOE support for the license application and related development of the nuclear waste repository at Yucca Mountain.

- a. List the names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the decision to terminate the nuclear waste repository at Yucca Mountain.
2. Please provide all documents provided to, or generated by, the Presidential transition team during the period November 4, 2008, through January 20, 2009, concerning or relating to the Yucca Mountain repository development or nuclear waste policy, including all transition documents relating to the DOE Office of Civilian Radioactive Waste Management (OCRWM).
3. Did you sign or authorize anyone else to sign any document approving DOE's withdrawal of the Yucca Mountain license application from the NRC?
 - a. If so, provide each such document and explain the rationale behind the decision to sign each such document. If not, please explain why no such authorization was given.
4. Did you sign or authorize anyone else to sign any document approving the DOE actions (a) to dismantle OCRWM and/or (b) to proceed to defund and dismantle the Yucca Mountain project support site operations and offices?
 - b. If so, provide each such document and explain the rationale behind the decision to sign each such document. If not, please explain why no such authorization was given.
5. What technical, scientific, regulatory, financial, policy, or legal information did you receive for the purpose of assisting or informing your decision making related to Yucca Mountain, including, but not limited to, decisions regarding budgeting for DOE's license application support activities, the elimination of OCRWM, the motion to withdraw the license application from the NRC, or the termination of the Yucca Mountain repository program?
 - a. Please provide all documents relating to such information, including but not limited to action or decision memoranda and documents provided to, or in the possession of, the Secretary, the Deputy Secretary, the Under Secretary, the Administrator of the National Nuclear Security Administration, the Assistant Secretary for Environmental Management, or the DOE General Counsel.
6. Please explain the basis for your decision to eliminate the OCRWM and the relevant legal authority upon which you relied as the basis for your ability to make such a decision. In addition, please explain:
 - a. The approximate date you initiated evaluation of OCRWM;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the evaluation and any decisions to eliminate the office;
 - c. When the decision was made to eliminate or otherwise shut down OCRWM;

- d. What the basis was for disbanding and disbursing the functions of OCRWM within other DOE offices;
 - e. What analyses or evaluations were performed to reach, inform, or guide this decision; and
 - f. What the basis was for determining that placement of OCRWM functions in other offices would conform with the statutory requirements and obligations under the Nuclear Waste Policy Act of 1982, as amended.
7. Please provide all documents containing information regarding the elimination, or potential elimination, of OCRWM.
8. Please explain the basis for your decision to withdraw the Yucca Mountain repository license application from the NRC and the relevant legal authority upon which you relied as the basis for your ability to make such a decision. In addition, please explain:
 - a. The approximate date you began the process of evaluating options for the license application withdrawal;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the evaluation of those options;
 - c. When the decision to file a motion to withdraw the application was made;
 - d. What the basis was for deciding to move to withdraw the license and why DOE sought to withdraw "with prejudice";
 - e. What analyses or evaluations were performed to reach, inform, or guide this decision; and,
 - f. What analyses or evaluations were performed to assess the long-term legal, financial, and policy implications of license withdrawal, should it succeed.
9. Provide all documents containing analyses or evaluations relating to the withdrawal of the license application from NRC.
10. Please explain the basis for DOE's decision to terminate operations related to the Yucca Mountain repository development, and explain the decision-making process regarding the shut-down and dismantlement of the site and site offices, the layoffs of DOE contractors and employees, and disbursement or disposal of program property, research, and data. Please also provide an explanation of the legal authority upon which you relied as the basis for this decision. In addition, please explain:
 - a. When the decision was made to terminate the program;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who were responsible for implementing the decision to terminate the program;
 - c. What the basis was for terminating the program before the motion to withdraw the license application from NRC was granted; and
 - d. What analyses, evaluations, or plans were created or discussed to reach, inform, or guide the decision to terminate the program.

11. Provide all documents relating in any way to DOE's deliberations or discussions regarding the evaluation of the Yucca Mountain program and the decision to terminate the program.
12. Has DOE been using the Nuclear Waste Fund (NWF) to fund operations to terminate DOE operations related to the Yucca Mountain repository?
 - a. If so, please explain why you used the Nuclear Waste Fund (NWF) to fund operations to terminate DOE operations related to the Yucca Mountain repository and the legal authority upon which you relied in order to justify spending NWF funds in such a manner.
 - b. Provide all documents relating to the use of the NWF to terminate Yucca Mountain operations.

The term "DOE" refers to the U.S. Department of Energy and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DOE. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

We appreciate your prompt attention to this request.



Fred Upton
Chairman

Sincerely,



John Shimkus
Chairman
Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3841

March 31, 2011

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

We write to notify you that the Committee on Energy and Commerce and its Subcommittee on Environment and the Economy are investigating the decision-making process related to the pending license application for construction of a high-level waste repository at Yucca Mountain.

At this time, we have questions about certain actions undertaken by you and the Nuclear Regulatory Commission (NRC or Commission) relating to (a) the proposed withdrawal of the license application for authorization to construct a repository at Yucca Mountain currently pending before the NRC; and (b) the defunding and termination of NRC's licensing proceedings of the Yucca Mountain repository license application (including staff technical and safety reviews) at a time when the full Commission has yet to decide the issue or authorize the defunding. We seek information necessary to evaluate the NRC's adherence to its statutory obligations and responsibilities under the Nuclear Waste Policy Act of 1982, as amended. We also seek information necessary to assess whether decisions were made according to NRC procedures and with full information and consideration of the policy, legal, and budgetary impacts of those decisions.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following within two weeks of the date of this letter. We also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is January 1, 2009, to the present.

1. Please provide a detailed chronological description of all NRC actions and decisions relating to the Yucca Mountain construction license application, including, but not

limited to, actions and decisions by the NRC Chairman, the Commission, and the Construction Authorization Board (CAB).

2. Please explain your role in the Administration's decisions concerning the Yucca Mountain license application, including, but not limited to, decisions to begin the closure of Yucca Mountain and to terminate the NRC technical and adjudicatory review of the license application for constructing a repository at Yucca Mountain.
 - a. List the names, titles, offices and roles of individuals, including those within the Office of the Chairman, who participated in deliberations regarding planning, actions, or decisions relating to the Yucca Mountain license application.
 - b. Please provide a list of all meetings and communications that have occurred between the NRC Chairman and the Executive Office of the President or Department of Energy (DOE), including Secretary of Energy Steven Chu, relating to constructing a repository at Yucca Mountain. Please include the dates of all such meetings and communications, the individuals present and a description of the subject matters discussed, and state whether the Commissioners or NRC staff were informed of each such meeting.
 - c. Provide all documents relating to any such meetings or communications.
3. Provide all documents relating to: (a) the development of the proposed FY 2010 budget for license support activities related to the Yucca Mountain license application, (b) any agreement by the Commission about the conditions necessary for terminating the various NRC license review activities, and (c) the decision to terminate Yucca Mountain license review activities in conjunction with FY 2011 Continuing Resolution funding.
4. Provide all documents relating to the April 23, 2010 Commission Memorandum and Order (CLI-190-13) (which vacated the CAB's decision to suspend consideration of DOE's motion to withdraw the license application and ordered the CAB to issue a decision no later than June 1, 2010). This request includes, but is not limited to, all staff memoranda and evaluations.
5. Please describe the specific Commission procedures followed in voting on the appeal (pending before the NRC) of the CAB's decision to deny the motion to withdraw the license application for a repository at Yucca Mountain, including, but not limited to, the dates of each action, vote, and any affirmation of the votes.
 - a. Explain the failure to complete action upon the appeal.
 - b. Provide all documents relating to the scheduling and resolution of the Commission's votes concerning the review of the CAB decision to deny DOE's motion to withdraw its Yucca Mountain license application.
6. Please explain the justification and legal authority for your decision, as NRC Chairman, to direct Commission staff to terminate review of the Yucca Mountain application.
 - a. Provide all documents relating to the direction to cease review of the Yucca Mountain application, including, but not limited to, the memoranda and analyses relating to the justification for the decision or authority to terminate review of the Yucca Mountain application.

