

**STATEMENT BY
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TO THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
US HOUSE OF REPRESENTATIVES
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Mr. Chairman, Ranking Member Green, and members of the Subcommittee, I am honored to appear before you today to provide my perspective on those internal NRC issues associated with the review of the Department of Energy's license application for the proposed repository at Yucca Mountain, Nevada.

Currently, I am the acting Deputy Office Director for the Office of Nuclear Material Safety and Safeguards at the NRC, although my official position is the Director of the Division of High-Level Waste Repository Safety. I have been with the NRC since 1989, and I have regulatory experience in reactors, materials and waste.

I had always wanted to be associated with a program of national significance, and when the opportunity to be the Director presented itself, I enthusiastically accepted. Part of my enthusiasm was due to the Repository Safety staff itself. All employees of the NRC are dedicated to its mission to assure safety, security and environmental protection, and the members of the Repository Safety division are no exception. Moreover, in 1987, agency leadership, with great foresight, contracted with the Southwest Research Institute that organized the Center for Nuclear Waste Regulatory Analyses as the NRC's only federally-funded research and development center and to be a conflict of interest free entity. Both the NRC and Center employees have expertise in geological and related sciences and engineering, and they are

dedicated professionals that have spent decades in preparation for this application. Besides wanting to work on a program of national significance, I wanted to work with these talented professionals. I recognized their unique set of knowledge, skills and abilities, and the challenging subject matter and context for this important major federal action. Quite frankly, I am very concerned about the loss of this disposal expertise as spent nuclear fuel continues to increase and the US program is now uncertain. I hasten to add that geologic disposal remains the internationally recognized means to isolate high-level radioactive waste for very long time periods.

The Nuclear Regulatory Commission is an independent agency, and as such, the agency has the responsibility to demonstrate this independence by openness and transparency in its deliberations and decision-making. This can be displayed by collaborating and assuring all information is available and discussed. Agency independence and its internal processes should be jealously guarded, and the appearance of political influence in such deliberations and decision-making should be avoided at all costs.

Given that the Congress did not amend the Nuclear Waste Policy Act or enact other legislation to discontinue development of Yucca Mountain, other legitimate internal processes could have occurred. For example:

- The Atomic Safety and Licensing Board could have agreed that the Department of Energy could withdraw the repository license application;
- The Commission itself could have overturned the Atomic Safety and Licensing Board's decision promptly; or alternatively,
- The collective Commission could have decided through a vote and subsequent Staff Requirements Memorandum that the staff should formally suspend its review pending legislative or adjudicatory action.

Staff would have willingly followed any outcome from a faithfully executed legitimate process. Until such decision, staff was under the distinct impression that it could continue its safety review as long as sufficient funding existed. Further, I would go so far to say that many think as I do - that the Nation paid for this review, and the Nation should get it.

I would have liked to have seen the Commission act collegially to address this issue. As noted in the recent Office of Inspector General report, the decision to close the program by the end of Fiscal Year 2011 was made without the entire Commission being fully informed or acting in concert. When this became apparent, executive staff leadership should have acted as a brake to afford the Commission information and time to assess and develop appropriate program direction. This would have enabled more budget and program information to rise to the entire Commission and would have precluded decisions based on incomplete information or perception.

Regardless of the NRC's evaluation of the technical merits of the application, the staff takes no position on actual construction and operation of a proposed repository. Ultimately, it is up to the Congress to determine whether to build and operate the facility. Any such national policy decision by Congress would be based upon the science and engineering performed by the Department of Energy and the subsequent safety evaluation and adjudication by the NRC, assuring that this meets the standards set by the Environmental Protection Agency.

NRC requires complete and accurate information in all material respects in relation to the repository license application (10 CFR 63.10). The Department of Energy has not identified a safety defect in the application; thus, it remains valid and before the NRC. I believe science and the scientific process must inform and guide NRC's regulatory decision-making. I further

believe we have been open and transparent with our stakeholders with regard to our regulatory duties as this Chairman and this Commission have emphasized. Technical staff associated with this program are dismayed by what has happened thus far, and we would hope the day comes soon when we can return to being boring regulators.

This concludes my remarks, and I look forward to your questions.