

September 1, 2011

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Catherine Haney, Director **/RA/**
Office of Nuclear Material Safety
and Safeguards

SUBJECT: UPDATE ON THE YUCCA MOUNTAIN PROGRAM

The purpose of this memorandum is to describe the activities that have taken place in the Yucca Mountain Program since the update that the staff sent to the Commission on February 4, 2011. Currently, we are on track to complete the orderly closure of the Yucca Mountain licensing review by the end of Fiscal Year (FY) 2011 and are under budget. In addition, this memorandum will project the activities that remain to be accomplished before closure of the Yucca Mountain Program on September 30, 2011.

Status of Technical Evaluation Reports

As reported in the previous update, the staff is converting the remaining volumes of its safety evaluation report into knowledge capture documents known as technical evaluation reports (TERs). The staff completed the report entitled “Technical Evaluation Report on the Content of the U.S. Department of Energy’s Yucca Mountain Repository License Application: Postclosure Volume (Repository Safety After Permanent Closure)” on March 31, 2011. The staff issued the document on July 21, 2011, after incorporating my comments.

On September 1, 2011, the staff issued the second TER, a pre-closure volume. The last TER, an administrative and programmatic volume, is scheduled for completion before September 30, 2011.

Status of Other Knowledge Capture Activities

The U.S. Nuclear Regulatory Commission (NRC) and the Center for Nuclear Waste Regulatory Analyses (Center) staffs are developing many reports intended to capture important technical and regulatory information, insights, and lessons learned from over twenty-five years of work during the prelicensing and licensing phases of the Yucca Mountain Program that are not

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currently captured in existing documents. These documents are similar to technical reports developed by the Center over the past 24 years as NRC's contractor. They present information on scientific and engineering topics such as lava flow cooling processes, corrosion of Alloy 22 and titanium drip shield materials, and interactions between magma and waste containers. These reports contain no regulatory findings. Forty-six reports have been identified to date. Of these, six have been completed and made public, and forty are undergoing NRC staff review. The staff intends to make these reports public by September 30, 2011.

Disposition of Records, Documents, and Materials

Since 1987, the Center has operated as NRC's contractor for its Yucca Mountain Program. During that time, the Center has accumulated a vast number of records, reports, and data sets which are stored as hard copies and on electronic media. In addition, the Center has collected many rock samples and used many metal samples in the course of studies done by Center staff. As part of the closure of the Yucca Mountain Program, on May 16, 2011, Southwest Research Institute (SwRI), the parent organization of the Center, sent NRC a letter requesting contractual direction with respect to disposition of various records and physical samples that were developed as part of technical assistance and research support to the NRC beginning in 1987. The letter presented a comprehensive set of records archival actions proposed to be taken by SwRI and the Center preparatory to the anticipated closeout of NRC's Yucca Mountain Program on September 30, 2011. NRC staff reviewed the SwRI proposal and approved it without alteration in a letter to SwRI dated June 3, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111740538 for both letters). The staff is working closely with the Center to ensure that the planned actions are completed by September 30, 2011. All proposed actions are consistent with the requirements of the Federal Acquisition Regulation.

The official NRC documents relating to the Yucca Mountain Program, including the material regarding the U.S. Department of Energy (DOE) license application and the subsequent licensing review and adjudicatory proceedings, are federal records (see 44 U.S.C. § 3301, definition of "federal records"). In accordance with the agency's comprehensive records disposition schedule (see NUREG-0910, "NRC Comprehensive Records Disposition Schedule", Revision 4, March 2005), those records will continue to be managed as NRC records in paper format (for pre-April 2000 paper records) or in an electronic format in ADAMS.

For documentary material not currently in ADAMS that may need to be controlled as official agency records, staff is working to develop solutions for transferring these materials to ADAMS or other storage alternatives. These materials will be (1) entered and profiled in ADAMS and be subject to the National Archives and Records Administration (NARA) - approved schedules in NUREG-0910, or (2) subject to new retention schedules, with appropriate storage and maintenance, approved by NARA. The archiving of materials related to the Yucca Mountain Program will be completed by September 30, 2011. The actions described above adhere in all respects to the requirements established by the NARA.

Closure of the Las Vegas Hearing Facility

NRC notified the General Services Administration (GSA) on May 25, 2011, that in accordance with the Occupancy Agreement with GSA, NRC will relinquish its Las Vegas Hearing Facility (LVHF) space to GSA and vacate the facility effective September 30, 2011. As a result, the GSA provided the lessor with notice of the lease termination on June 1, 2011. In July 2011, the

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Atomic Safety and Licensing Board Panel's information technology staff and contractors returned to the facility to dismantle the Digital Document Management System audiovisual system. The LVHF is now unavailable for any future Board events. As of August 15, 2011, any furniture or other items being removed by outside parties became available for pickup at the facility, and items requested by NRC entities were ready to be shipped from the facility. The building, which will continue to have federal security/fire alarm protection and guard service until this lease is terminated, will be made ready to return to the lessor in a "broom-clean" condition by September 30, 2011.

Licensing Support Network Decommissioning

The Licensing Support Network (LSN) Administrator has developed an information system decommissioning plan for the LSN, along with a statement of work for contractor support activities that are needed to decommission the system but that are outside the scope of the current LSN operations and maintenance contract. These activities include removal of all LSN hardware and software housed at the AT&T network facility in Ashburn, Virginia, and at the contractor's facility in Tyson's Corner, Virginia. The LSN contract modification to AT&T was completed at the end of July 2011 and system decommissioning work has begun. System shutdown occurred on August 5, 2011. System decommissioning will be completed on or before September 30, 2011.

ASLB Hearing Process Regarding DOE's Yucca Mountain License Application

The Construction Authorization Board 4 (the Board) has continued to preside over the Yucca Mountain proceeding after denying the DOE license application withdrawal motion in June 2010. Since the last Yucca Mountain Program update, the Board denied DOE's motion asking the Board to temporarily suspend the proceeding (ML110560524). DOE filed a similar motion before the Commission on March 4, 2011 (ML110630548). The Commission has not yet ruled on that motion. The Board issued a number of other orders over the past several months. A chronology of proceeding activities is included in Enclosure 1 to this memorandum.

Freedom of Information Act Responses

On October 22, 2010, the NRC received a Freedom of Information Act (FOIA) request from the Heritage Foundation for the "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada, Volumes 2 and 3." On February 14, 2011, the requested documents, with predecisional information redacted, were sent to the requestor. The Heritage Foundation appealed the withholding of the predecisional information on March 14, 2011. The Deputy Executive Director for Corporate Management issued a letter denying the requestor's appeal on June 17, 2011.

On November 12, 2010, the NRC received an FOIA request from the Center for Public Integrity, for "all correspondence between members of Congress and NRC Chairman Gregory Jaczko regarding the Yucca Mountain site in Nevada from January 2005 to the present." On February 15, 2011, the NRC released the requested documents in their entirety to the requestor.

On April 1, 2011, the NRC received another FOIA request from the Center for Public Integrity, this one for all correspondence between members of Congress and the NRC involving the Yucca Mountain project, 2008 to present. The staff is currently working to gather the requested records.

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Congressional Responses

During the past six months, two Congressional Committees requested information and documents from the Chairman and NRC staff as part of the Committees' investigations into the termination of the Yucca Mountain Program. The agency provided copious amounts of written and electronic records. In addition, several managers and staff members were interviewed by the Committees, and on May 24, 2011, the Chairman and Commissioners testified at a hearing conducted by two subcommittees of the House Committee on Energy and Commerce. On June 24, 2011, I testified with several other NMSS representatives at a hearing conducted by a subcommittee of that same House Committee.

Action Plan for Responding to Concerns Raised by an NMSS Staff Member

In a memorandum dated June 20, 2011 (ML111940243), an NMSS staff member requested that the Commission intervene in certain matters related to the Yucca Mountain Program. A Staff Action Plan (ML112060263) was developed in response to the memorandum. This plan has been revised to clarify activities and to revise completion dates. All actions have been completed or are in progress.

Resources

NRC's FY 2011 appropriation for the High-Level Waste Repository Program totaled \$10M less a \$20K rescission. This included approximately \$5M in salaries and benefits for 32 FTE and approximately \$5.0 million for contract support and travel. During FY 2011 the staff converted approximately \$2.2 million of the \$5.0 million in contract support and travel funding to salaries and benefits, making the final breakdown of the overall funding approximately \$7.0 million for salaries and benefits and \$3.0 million for contract support and travel. As of July 16, 2011, approximately 23 FTE had been utilized, and as of July 31, 2011, approximately \$1.8 million had been obligated for contract support and travel. These numbers, while current as of a month ago, remain the best reasonably available information.

Approximately \$200 thousand of the \$2.8 million in contract support and travel funding is being used for shutdown activities for the Licensing Support Network (LSN). ASLBP is working with the AT&T contractor to coordinate and schedule termination activities of the webhosting facility where the LSN hardware and software reside. This will affect an orderly shutdown of the LSN prior to September 30, 2011. No additional resources are needed for an orderly shutdown of the Las Vegas Hearing Facility, which will be completed by September 30, 2011.

Current projections reflect that the program will underburn by 18 full time equivalent staff and approximately \$1 million contract support/travel funds. Staff is evaluating medium and lower priority knowledge management activities that can be completed using these resources. However, this effort will delay some of the work planned in FY 2011 in the Extended Storage and Transportation and Waste Confidence areas.

In a June 30, 2011 letter to the U.S. Congress, the agency requested approval to reprogram \$4 million of prior year carryover Nuclear Waste Fund resources as a contingency to provide supplemental support for the orderly closure of the Yucca Mountain High-Level Waste Repository activities (ML11182A468). These funds would be provided for the development and loading of a separate LSN docket library in ADAMS for public access. Activities to set up this library would include development of the system, beginning document processing, and operational support activities for the first year.

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On August 2, 2011, the U.S. House of Representatives, Subcommittee on Energy and Water Development, Committee on Appropriations, did not approve the requested reprogramming of prior year funds to support HLW program activities. SECY will continue receiving material on storage media (hard drives, DVD, or CD) and storing them until funding to develop and operate an LSN docket library in ADAMS becomes available. SECY's obligations could also be affected by the Commission's consideration of the staff's petition for the Commission to review Board Orders regarding preservation of the LSN collection. Actions to integrate the LSN documents into ADAMS cannot occur unless Nuclear Waste Funds are available in FY 2012.

Conclusion

Currently, the NRC staff is on track to complete the orderly closure of the Yucca Mountain licensing review by the end of FY 2011, and closure activities are under budget.

Coordination

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Two staff members in NMSS filed non-concurrences on this memorandum (Enclosure 1 and 2). These non-concurrences are included in the interest of providing the Commission with alternative views.

This paper contains predecisional procurement and budget information and should be withheld from public disclosure.

Enclosures:

1. Chronology of Recent High-Level Waste Proceeding Activities.
2. Non-Concurrence dated July 21, 2011
3. Non-Concurrence dated July 21, 2011

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