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Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives

Paul R. LePage, Governor Mary C. Mayhew, Commissioner

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April 25, 2011

MEMORANDUM

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

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

SUBJECT: State Nuclear Safety Inspector's October through December 2010 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 of used nuclear fuel. The January through February reports will be submitted with the March report and they should be available the week of April 25.

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.

MCM/klv

Enclosure

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, DHHS
Dr. Stephen Sears, Acting Director, Maine Center for Disease Control and Prevention, DHHS
Darryl Brown, 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, DHHS
Jay Hyland, PE, Manager, Radiation Control Program, DHHS

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Maine Center for Disease Control and Prevention
An Office of the Department of Health and Human Services

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March 31, 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 October through December 2010 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.

Considering the numerous changes in the Legislature and its leadership and to afford a better understanding of the national situation with used nuclear fuel, I have provided below a brief historical summary of events that have transpired previous to these reports to help bridge the gap and segue into what is happening now.

Background:

1. In 1982 the Nuclear Waste Policy Act (NWPA) set a date certain of January 1998 for the federal government to take possession of and dispose of spent nuclear fuel and established a fee for the Nuclear Waste Fund to dispose of the spent nuclear waste.
2. In 1987 the NWPA was amended to designate Yucca Mountain in Nevada as the federal repository for spent nuclear fuel and high level waste.
3. In January 1998 the Department of Energy was unable to take possession of the nuclear waste as the Yucca Mountain Project was far from being completed. The failure resulted in a breach of contract nationwide with utilities that have nuclear generating facilities. Numerous lawsuits were filed.
4. In 2002 the Department of Energy recommended Yucca Mountain as a suitable site for the nation's first geologic repository. President Bush approved the recommendation. Nevada's Governor vetoed the Yucca Mountain Project. Congress overrode Nevada's opposition and President Bush signed the Joint Resolution into law.
5. In June 2008 the Department of Energy submitted to the Nuclear Regulatory Commission its license application to build a repository at Yucca Mountain in Nevada.
6. In September 2008 the Nuclear Regulatory Commission accepted the application and commences its three year review.
7. In November 2008 Candidate Obama won the national elections and vowed to stop the Yucca Mountain Project.
8. In February 2009 the proposed FY2010 federal budget reduced funding for the Yucca Mountain Project to maintain only the licensing review process underway at the Nuclear Regulatory Commission.
9. In May 2009 twelve intervenors filed 318 contentions in the Yucca Mountain licensing proceedings. The Nuclear Regulatory Commission's Atomic Safety and Licensing Board accepted 299 contentions for review.

10. In January 2010 President Obama established the Blue Ribbon Commission on America's Nuclear Future to develop a plan on how the nation's nuclear stockpile should be managed.
11. In February 2010 the President's FY 2011 Budget did not include any funding for the Yucca Mountain Project for the Department of Energy and $10 million for the Nuclear Regulatory Commission to commence the orderly closure of the Project.
12. In March 2010 the Department of Energy filed a motion with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board to withdraw its license application before the Board and started the process of dismantling the Yucca Program.
13. In May 2010 the U.S. Court of Appeals for the District of Columbia Circuit imposed a stay on its review of the Yucca Mountain Project pending the outcome of the Nuclear Regulatory Commission's Atomic Safety and Licensing Board's ruling on the withdrawal of the license application and subsequent review by the Commission.
14. In June 2010 the Nuclear Regulatory Commission's Atomic Safety and Licensing Board denied the Department of Energy's motion to withdraw its license application saying that only Congress has the authority to do so.
15. In July 2010 the Nuclear Regulatory Commission tried to rule on the Atomic Safety and Licensing Board's decision but found itself deadlock.
16. In September 2010 the U.S. Court of Federal Claims raised Maine Yankee's initial award of $75.8 million decreed in October of 2006 to $81.7 million for its lawsuit against the federal government's failure to take the spent fuel.

Enclosed please find the Inspector's October through December 2010 monthly activities reports. The submission of these reports was temporarily delayed due to other competing work. The major highlights for the reports locally are: Maine Yankee held its annual emergency plan exercise, the Five-Year Post Decommissioning Radiological Groundwater Monitoring Program Agreement between the State and Maine Yankee is nearing the end, and the preliminary draft of the Confirmatory Summary Report detailing the State's decommissioning findings is 50% complete.

The major highlights nationally for the fourth quarter include the Nuclear Regulatory Commission's Chairman, Dr. Jaczko, using the language in the President's FY 2011 budget request instead of Congress's FY 2011 Appropriations Continuing Resolution at FY 2010 levels to unilaterally halt the Nuclear Regulatory Commission's active review of the Yucca Mountain license application. His actions precipitate a wave of letters from Congress and previous Nuclear Regulatory Commissioners. Another highlight is the balance sheet on the Nuclear Waste Fund listing the individual states and their contributions into the Fund since its inception. The Table does draw attention to an outstanding balance of $116.9 million for Maine ratepayers. A further highlight is Energy Secretary Chu's issuance of his long awaited fee adequacy assessment for disposing of the nation's used nuclear fuel and high-level waste. His assessment maintains the current fee of over $750 million annually. One other highlight involves the Nuclear Regulatory Commission publishing its final revision to its Waste Confidence Rule, which stipulates that spent nuclear fuel can be safely stored on-site at existing reactor facilities for up to 120 years. Earlier the Commission directed the Staff to evaluate extended storage at reactor sites up to 300 years. On the heels of the Commission's Rule two reports from two separate organizations, the U.S. Nuclear Waste Technical Review Board and the Massachusetts Institute of Technology, were published to weigh in on the extended storage of spent fuel at current and former reactor sites. One report focused on the lack of technical knowledge while the other evaluated the key factors that would impact future decisions on interim storage facilities. Both reports make recommendations on research and development going forward. In this backdrop the Blue Ribbon Commission and its Subcommittees continue to hold meetings. Some of those meetings included international visits to Finland and Sweden to get first hand experience on how the Scandinavians were successful in siting a repository with their local communities.

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
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Mr. Darryl Brown, 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

October 2010 Monthly Report to the Legislature

Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 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 were no longer included in the report. Instead, this information was 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 October the general status of the ISFSI was normal. There were no instances of spurious alarms due to environmental conditions.

There was one fire-related impairment on October 27th. The impairment was due to a fire barrier penetration to the east wall of the central alarm station and was related to the fence relocating project described below. Additional measures were instituted and the impairment was resolved in less than a day.

There was one security-related impairment in October. The impairment was due to the relocation of the security fence near the east side of the Security and Operations Building. The project was reviewed by the Nuclear Regulatory Commission but it did not require their approval. The re-aligning of the fence was to minimize the number of spurious and environmental alarms the ISFSI was experiencing. The fence work continued into November.

There were 17 security events logged. Fourteen of the entries were due to transient environmental conditions. One event was related to the fence construction project and two involved safeguards information that prevents disclosure to the public.

There were 12 condition reports[1] (CR) for the month of October. The first CR was written on October 4th and involved the State's field thermoluminescent dosimeter[2] (TLD) at Station C. The TLD is used to monitor the radiation levels around the ISFSI. Apparently, as part of reducing visual impairments, the lower limbs of the

[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.

[2] Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. Further information on TLDs is available from the glossary on the Radiation Program's website.

pine trees near Ferry Road were cut. One of the branches cut had a State TLD. The State Inspector reported his finding during his quarterly environmental field replacement of the TLDs and filed a CR with the on-site security personnel.

The remaining CRs involved the following issues.

- 2nd CR: Involved a minor hydraulic spill at the diesel fueling concrete pad. The spill was cleaned up and documented.
- 3rd CR: Addressed a missed water sample from the June radiological groundwater sampling campaign. When notified by the State Maine Yankee immediately took a sample.
- 4th CR: Dealt with safeguards information that can not be disclosed to the public.
- 5th CR: Documented the improper use of a procedure attachment that was under a previous revision. The current revision was used.
- 6th CR: Involved the digging effort associated with the fence project starting without a Soil Scientist present. The digging was halted until the Soil Scientist was present the next day.
- 7th CR: Documented the writing of a CR on an earlier revision of the form. The CR was rewritten on the current form.
- 8th CR: Resulted from some of the fence work not meeting project specifications. The sub par work was redone.
- 9th CR: Addressed an out of date form in one of the fence project work packages. There was no impact on the work and the form was used as is.
- 10th CR: Dealt with a contractor improperly storing a gas can. The can was immediately placed in proper storage.
- 11th CR: Involved a contractor leaving an energized extension cord at the end of the workday. The cord was immediately unplugged.
- 12th CR: Documented the degrading condition of some of the Uninterruptible Power Supply batteries. Although the batteries were degraded they were operable. New batteries were ordered and installed.

Other ISFSI Related Activities

On October 6th Maine Yankee provided their annual ISFSI Emergency Plan training to state officials at the Maine Emergency Management Agency facility in Augusta.

On October 12th the quarterly oversight group overseeing ISFSI activities met and discussed the members' annual reports to the legislature's Joint Standing Committee on Utilities and Energy. It was agreed that they would furnish a draft of their reports to the State's Radiological Control Program Manager by mid-December. Each member informed the group of their past activities. The State Nuclear Safety Inspector briefed the group as to his past quarterly activities as well as to his current and upcoming activities and commitments. The oversight group, which meets quarterly, was formed from the same legislation that created the State Nuclear Safety Inspector position and is composed of representatives from the Office of Public Advocate, the Department of Public Safety, the Department of Environmental Protection, the Department of Health and Human Services' Radiation Control Program, and Maine Yankee.

On October 26th the Nuclear Regulatory Commission (NRC) issued a letter on the pending acquisition of Maine Public Service (MPS), owner of a 5% interest in Maine Yankee, by BHE Holdings, Inc. MPS does not own a direct interest in the ISFSI. The NRC determined that the acquisition and merger did not constitute an indirect license transfer for the NRC review. Consequently, no pre-consent from the NRC was required.

On October 27th Maine Yankee held its annual Emergency Plan exercise. The scenario was of a two man armed assault, killing a security guard and using a rocket launcher to pierce the vertical concrete casks. One rocket was launched with visible damage to the external concrete but no damage to the transport and storage cask

housing the spent fuel inside the concrete shield. An Unusual Event was declared and appropriate state and local officials responded. There was no gaseous or particulate radiation released, but on-site radiation levels did increase due to the damaged cask. The two perpetrators were last seen heading towards the Back River. The Marine Patrol and Coast Guard were called in. A debriefing was held after the drill was terminated to discuss the overall response. Some suggestions for improvement were made.

Environmental

On October 4th the State performed its quarterly field replacement of its radiation monitoring devices near the ISFSI. When the results are received from the vendor, the information will be provided in November's monthly report. It should be noted that the air sampling at Maine Yankee and media sampling of the Back River was discontinued in 2010 after about 40 years.

Maine Yankee Decommissioning

The Confirmatory Summary Report detailing the State's involvement and independent findings from the decommissioning was started.

Groundwater Monitoring Program

On October 12th the State's review of Maine Yankee's June groundwater data noted that one of the wells was not analyzed for the required gamma, tritium,[3] and hard-to-detect[4] and transuranic[5] analyses. In addition, the analyses for radioactive Iodine-129 did not meet the minimum detectable concentration specifications outlined in the post decommissioning radiological groundwater agreement between Maine Yankee and the State. Maine Yankee agreed to sample well number MW-306 and to perform the required analyses.

On October 27th Maine Yankee notified the State that it was assessing the quality control validation performed by an independent contractor on the June groundwater data and would provide the State with that information when it became available.

Other Newsworthy Items

1. On October 4th the Nuclear Regulatory Commission released a memorandum from their Chief Financial Officer and Executive Director of Operations on the guidance office directors and regional administrators should heed under a FY 2011 continuing resolution. A copy of the memorandum is attached.

2. On October 6th the Assistant Attorney General of Washington sent a letter to the counsels representing the Department of Justice and the Nuclear Regulatory Commission (NRC) requesting information confirming the validity of the NRC staff's cessation of work on the Yucca Mountain Project based on a directive from the NRC Chairman. A copy of the letter is attached.

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[3] Tritium is a special name given to the radioactive form of Hydrogen normally found in nature. For more information, refer to the glossary on the Radiation Program's website.

[4] Hard-To-Detect 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.

3. On October 7th Aiken County, South Carolina and the states of Washington and South Carolina filed a motion with the Nuclear Regulatory Commission (NRC) for a Commission order to restore the technical review of the Yucca Mountain license application. The motion was introduced when the Chairman of the Commission was perceived to unilaterally halt the NRC's staff review of the Yucca Mountain license application.

4. On October 8th Dr. Kenneth Rogers, a former Nuclear Regulatory Commissioner from 1987-1997, sent a letter to the Inspector General of the Nuclear Regulatory Commission requesting that the recent actions by NRC Chairman Jaczko to cease NRC activities associated with the Yucca Mountain review be investigated for any legal or other improprieties. Dr. Rogers also included in his letter to the Inspector General a letter he wrote to Chairman Jaczko expressing his concerns on the independence of the Commission and urging Dr. Jaczko to commit to the principle of independence adopted by the Commission in 1991. Copies of both letters are attached.

5. On October 8th Nuclear Regulatory Commissioner William Ostendorff issued a memorandum to his fellow Commissioners on his dissension with the staff budget guidance under FY 2011 continuing resolution. The memorandum delineates in detail his rationale for disagreeing with the guidance and why the Nuclear Regulatory Commission should continue with its Yucca Mountain review. A copy of his memorandum is attached.

6. On October 11th Representative Spratt from South Carolina, Chairman of the House's Committee on the Budget sent a letter to the Chairman of the Nuclear Regulatory Commission (NRC) expressing his deep concerns over the NRC's direction to cease its Yucca Mountain license application review. A copy of his letter is attached.

7. On October 12th the Reactor and Fuel Cycle Technology Subcommittee of the Blue Ribbon Commission met to discuss waste management implications of fuel cycle alternatives, advantages and disadvantages of new fuel cycles, and limiting future proliferation and security risks.

8. On October 12th the State of Nevada and the respondents, (the President, the Secretary of Energy, the Department of Energy, the Nuclear Regulatory Commission (NRC), the NRC Commissioners, the NRC Licensing Board Judges), filed a response with the U.S. Court of Appeals for the District of Columbia opposing the motion to lift the Court ordered stay and set an expedited schedule.

9. On October 12th the Nuclear Waste Strategy Coalition (NWSC) sent a letter to both co-chairs of the Blue Ribbon Commission's Reactor and Fuel Cycle Technology Subcommittee expressing concerns over the continued requirement for ratepayers to pay into the Nuclear Waste Fund when the Department of Energy dismantled the Yucca Mountain Project, the liability the federal government is accruing from its failure to remove the spent fuel, and how ratepayers are paying up to four times for the consequences of not building a permanent repository. A copy of their letter is attached. 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.

10. On October 13th four members of the House of Representatives from the states of Wisconsin, Texas and Washington, sent a letter to Nuclear Regulatory Commission Chairman Jaczko expressing their concerns over the Chairman's decision to terminate the staff's review of the Yucca Mountain license application. The Representatives detailed a number of reasons why the Chairman's directive was alarming and requested a response to six questions that ranged from the Chairman's legal authority for his decision to specific communications with the White House. A copy of their letter is attached.

11. On October 13th the Nuclear Waste Strategy Coalition (NWSC) held a conference call to brief its members on the status of the FY 2011 appropriations continuing resolution and other congressional activities, an update of the Nuclear Regulatory Commission's (NRC) review of the Department of Energy's (DOE) Yucca Mountain license application, the current status of the U.S. Court of Appeals for the District Of Columbia Circuit's stay of lawsuits pending the NRC's decision on their Atomic Safety and Licensing Board's ruling to deny the DOE's motion to withdraw its license application, the State of Washington's Attorney General's letter on Chairman's Jaczko's decision to halt the NRC staff's work on Yucca Mountain, and an update of the Blue Ribbon Commission's Committee and Subcommittee hearings.

12. On October 13th the Senior Counsel for the Nuclear Regulatory Commission (NRC) responded to Washington State's Assistant Attorney General's letter dated October 6th. The Senior Counsel points to the NRC's Chief Financial Officer's October 4th memorandum and the Commission's proposed FY 2011 budget under NUREG -1100, Volume 26 as a basis for discontinuing the Yucca Mountain review. A copy of the NRC response is attached.

13. On October 14th the Sustainable Fuel Cycle Task Force sent a letter to the Nuclear Regulatory Commission (NRC) Chairman Jaczko and the four other Commissioners requesting the reversal of the Chairman's directive to halt work on the Department of Energy's Yucca Mountain license application. A copy of their letter is attached.

14. On October 14th Nuclear Regulatory Commissioner Kristine Svinicki affirmed Commissioner Ostendorff's proposal on Commission direction on the staff budget guidance under FY 2011 continuing resolution. A copy of her remarks detailing her reasons for agreeing with Commissioner Ostendorff is attached.

15. On October 14th the Secretary of the Nuclear Regulatory Commission (NRC) issued a memorandum to Commissioner William Ostendorff notifying him that a majority of the Commissioners declined to participate in the matter of the Commission direction on staff budget guidance under the FY 2011 continuing resolution. Therefore, his proposal was not approved.

16. On October 15th the petitioners Aiken County, South Carolina, the states of Washington and South Carolina, the Tri-City Leaders from Hanford, Washington, and the National Association of Regulatory Utility Commissioners filed a response with the U.S. Court of Appeals for the District of Columbia Circuit on the Department of Energy's opposition to a motion filed earlier by the petitioners to lift the Court's stay and set an expedited schedule. The petitioners' motion was prompted based on the Nuclear Regulatory Commission Chairman's unilateral decision to halt the NRC staff review of the Department of Energy's (DOE) Yucca Mountain license application and the continued inaction of the Commission with respect to their Atomic Safety and Licensing Board's ruling denying the DOE's motion to withdraw its license.

17. .On October 16th the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a letter to the Assistant Secretary for Nuclear Energy for the Department of Energy as a follow-up to the NWTRB's public meeting in June 2010 recommending that studies should be undertaken to prevent future problems with extended dry cask storage. The letter also advocated for a strong program in scientific research and technology development in waste management. The NWTRB was created as part of the 1987 amendments to the Nuclear Waste Policy Act (NWPA) and was charged with reviewing the Department of Energy's technical activities under the NWPA. A copy of their letter is attached.

18. On October 18th the National Association of Regulatory Utility Commissioners (NARUC) along with 18 commercial utilities filed a final initial brief with the U.S. Court of Appeals for the District of Columbia Circuit on the Department of Energy's failure to perform an annual Nuclear Waste Fund (NWF) fee assessment and the adequacy of that fee in light of a $24 billion balance in the NWF and the dismantling and defunding of the Yucca Mountain Project.

19. On October 18th the Nuclear Regulatory Commission (NRC) staff responded to a motion filed with the Commission for an order to restore the technical review of the Yucca Mountain license application. The staff asserted that the motion should be denied as there is no basis to grant the relief requested. Likewise, the State of Nevada also filed with the Commission on the same day their contention that the motion should be denied since it did not include the proper certification as mandated by the NRC's regulations. The Native Action Community Council concurred and joined Nevada in their opposition to the motion.

20. On October 19th the State of Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its third witness update on the Yucca Mountain application. Nevada indicated there were no additional witnesses.

21. On October 19th the State of Nevada filed a corrected answer with the Nuclear Regulatory Commission on their contention that a motion to restore the technical review of the Yucca Mountain license application be denied.

22. On October 19th two members of the House of Representatives from Michigan and Kentucky sent a letter to the Inspector General of the Nuclear Regulatory Commission requesting a "formal investigation into the Chairman's recent actions to shut down the (Yucca Mountain) project". A copy of their letter outlining their request is attached.

23. On October 20th seven members of the House of Representatives, representing Georgia, Tennessee, New Jersey, Idaho, California, Louisiana, and Montana, sent a letter to the Chairman of the Nuclear Regulatory Commission protesting the "premature and partisan closure of the Nuclear Regulatory Commission's (NRC's) consideration of the Yucca Mountain license application." The representatives went on to say that the NRC's FY2011 "budget request is irrelevant under the CR" (continuing resolution). A copy of their letter is attached.

24. On October 21st the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a letter to the Assistant Secretary for Environmental Management for the Department of Energy as a follow-up to the NWTRB's public meeting in June 2010 recommending that the:

    a) as-built lifetimes for all dry storage of spent nuclear fuel stored in Idaho be assessed in light of the uncertainty of the availability of a geologic repository,
    b) 500 year design lifetime of the bins containing calcined liquid high level waste be re-examined, and
    c) characteristics of the final waste form for the steam treatment of sodium-bearing waste, which may become high-level waste, was of interest.

    A copy of their letter is attached.

25. On October 21st -22nd the Blue Ribbon Commission held a two day meeting in Helsinki, Finland to discuss the Finnish approach to regulatory issues, site selection, public opinion, finance and economics, and non-government organizations' perspectives, such as Greenpeace and the Finnish Association for Nature Conservation.

26. On October 23rd and October 25th-26th the Blue Ribbon Commission held meetings in various locations in Sweden. The discussions centered on the local government's perspective, the repository project, concerned citizenry and the role of non-government organizations (NGO), such as the Swedish NGO Office for Nuclear Waste Review. The visit also included a site tour of the Apso Hard Rock Laboratory in Oskarshamn. The Apso Laboratory is an underground laboratory for research, development and demonstration in a realistic and undisturbed rock environment down to the same depth planned for their future deep repository.

27. On October 25th Aiken County South Carolina, the states of Washington and South Carolina, and the Tri-City Leaders from Hanford, Washington, filed with the U.S. Court of Appeals for the District of Columbia Circuit a supplemental filing regarding the motion to lift the Court's stay on the Yucca Mountain license application and set an expedited schedule. The supplemental information provided new evidence that a decision to terminate the Nuclear Regulatory Commission's staff review of the Yucca Mountain license application was made without the Commission's deliberation.

28. On October 26th the Nuclear Regulatory Commission (NRC) staff filed with the NRC's Atomic Safety and Licensing Board indicating that they had no additional witnesses related to Phase I of the National Environmental Policy Act on the Yucca Mountain license application.

29. On October 26th the Nuclear Waste Technical Review Board (NWTRB) held a fall meeting to discuss the technical experience gained during the development of the Yucca Mountain Repository Program. Three panels were created with each providing separate perspectives from within the Yucca Project, from state and local governments and from other countries. A copy of their agenda is attached.

30. On October 27th Nuclear Regulatory Commissioner William Ostendorff responded to Representative Doc Hastings' October 21st letter inquiring about the Nuclear Regulatory Commission's (NRC) decision to halt the work on Yucca Mountain and the status of Volume III of the Yucca Mountain's Safety Evaluation Report (SER). The Commissioner reiterated his position that he disagreed with Chairman Jaczko's decision to close out the NRC's High-Level Waste Repository Program. As for the status of Volume III of the SER, the Commissioner noted that the SER was sent to the Director of Nuclear Material Safety and Safeguards for "concurrence and authorization to publish" as early as July 15, 2010. A copy of the letter is attached.

31. On October 27th Nuclear Regulatory Commission Chairmen Jaczko responded to Representative Sensenbrenner's October 13th letter stating that his actions are "consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past NRC practice". Chairman Jaczko addresses each of the six questions posed in the Representative's October 13th letter that was co-signed by three other representatives. Copies of the letter and response to the questions are attached.

32. On October 27th Aiken County South Carolina, the states of Washington and South Carolina, and the Tri-City Leaders from Hanford, Washington filed with the U.S. Court of Appeals for the District of Columbia Circuit a status report as required by Court Order on July 28th on the initial filing of the motion to lift the stay. On the same day the Department of Justice and the Nuclear Regulatory Commission also filed with the U.S. Court of Appeals their status report.

33. On October 27th the Nuclear Waste Strategy Coalition (NWSC) held a conference call to brief its members on the status of the Nuclear Waste Fund fee litigation, FY 2011 appropriations continuing resolution, an update to the U.S. Court of Appeals for the District Of Columbia Circuit's Aiken County's (South Carolina) petition to expedite the briefing schedule on the Department of Energy's

motion to withdraw its license application on Yucca Mountain, and an update on the congressional activities in response to Chairman Jaczko's decision to terminate the NRC's work on Yucca Mountain, and a status brief of the Blue Ribbon Commission's Committee and Subcommittee meetings.

34. On October 27th Aiken County South Carolina, the states of Washington and South Carolina, and the Tri-City Leaders from Hanford, Washington filed with the U.S. Court of Appeals for the District of Columbia Circuit a status report as required by the Court order earlier this year on the initial filing of the motion to lift the stay.

35. On October 27th the Department of Justice and the Nuclear Regulatory Commission filed a response with the U.S. Court of Appeals for the District of Columbia Circuit opposing the October 25th filing of the petitioners' supplemental filing motion to lift the stay and set an expedited schedule.

36. On October 28th the State of Nevada filed their response with the U.S. Court of Appeals for the District of Columbia Circuit on the October 25th filing of the petitioners' supplemental filing motion to lift the stay contending that the supplemental filing is unauthorized, misdirected and misleading

37. .On October 28th Clark County, Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its third certification of no additional witnesses in the Yucca Mountain license application. Likewise, on the same day, the Department of Energy and Inyo County, California, also filed their certifications indicating no additional witnesses.

38. On October 29th the Joint Timbisha Shoshone Tribal Group filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board their certifications of no party witnesses and no additional other witnesses on the Yucca Mountain license application before the Board.

39. On October 29th former Chairman of the Nuclear Regulatory Commission (NRC), Dr Dale Klein, took exception to NRC Chairman Jaczko's assertion that the decision to terminate the NRC staff's work on the Yucca Mountain license application was consistent with the Commission's FY 2011 budget proposal. Dr. Klein stated that he was intimately involved in the deliberations of the FY 2011 budget in the summer and fall of 2009 as the Chairman of the NRC. The FY 2011 budget that he was instrumental in developing did not include provisions for the discontinuation of the staff's work on Yucca Mountain. He further asserts, since three current Commissioners did not vote on the budget guidance he helped develop then his budget remains in force, which opposed Chairman Jaczko's position. A copy of the Nuclear Townhall article which included Dr. Klein's letter is attached.

Other Related Topics

1. Attached is a balance sheet on the Nuclear Waste Fund (NWF) as of the end of September 2010. The Table lists the status for each state that has or had nuclear generating facilities and their respective payments into the NWF. Please note that under the debt column, the ratepayers of Maine still owe the federal government $116.9 million dollars for nuclear fuel that was burned prior to 1983.

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

October 4, 2010

MEMORANDUM TO: Office Directors and Regional Administrators

FROM: J. E. Dyer
Chief Financial Officer

R. W. Borchardt
Executive Director for Operations

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING RESOLUTION

On September 30, 2010, a Continuing Resolution (CR) through December 3, 2010, was signed into law. The purpose of this memorandum is to review and augment the earlier guidance on budget execution. The amount of funding available under a CR is determined by the annual CR legislation enacted by Congress. Funding availability is based on the previous fiscal year appropriated level augmented by unobligated carryover, as in past years. The NRC's FY 2011 budget request sustains agency's programs at approximately the same level as FY 2010, with the exception of the High-Level Waste Program. Therefore, offices should proceed to commit, obligate, and expend funds for ongoing activities to effectively use available resources during the CR.

Although the staff made improvements, we continue to emphasize the importance of effectively executing the agency budget by incrementally funding activities, as well as, preparing and moving procurement packages through the acquisition process with "subject to availability of funds" language, when appropriate, to expedite the award process when sufficient funds become available. Additionally, to maintain maximum flexibility, priority for funds for existing contract support activities should be allocated only to those activities that do not have sufficient forward funding.

As highlighted in the earlier guidance provided by the Office of the Chief Financial Officer (OCFO), CR funding will be provided based on the offices' needs as identified in their Funds Utilization Plans (FUP) submitted on August 6, 2010. Based on the office's FUPs, agency funding needs exceeded the funds available in the first quarter. As a result, we plan to provide offices with 60 percent of the requested funding for the period of the CR. Offices should advise OCFO of any significant mission critical needs as a result of the constrained funding.

During the CR period, new work that was not authorized and funded in FY 2010 should not be started in FY 2011. Offices should contact the OCFO prior to funding any questionable

CONTACT: Reginald W. Mitchell, OCFO
(301) 415-7540

activities under the CR. In addition, contract awards for FY 2011 should be reflected in your Advance Procurement Plan (APP). It is important that offices processing contract documents consistent with their APPs/FUPs continue to focus on improved budget execution during the CR.

With respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR.

As we move forward, the OCFO will refine the CR plan and issue allowances for every CR period thereafter, until such time the agency receives its full appropriation/apportionment. After the agency receives its full-year appropriation/apportionment, this guidance will be rescinded and all normal budget execution operations will be resumed.

cc: PMDA/DRMA Directors

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Ecology Division
2425 Bristol Court SW 2nd Floor • Olympia WA 98502
PO Box 40117 • Olympia WA 98504-0117 • (360) 586-6770

October 6, 2010

SENT VIA EMAIL

Ellen J. Durkee
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 23795 (L'Enfant Station)
Washington, D.C. 20026-3795
ellen.durkee@usdoj.gov

John F. Cordes, Solicitor
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
john.cordes@nrc.gov

Dear Ms. Durkee and Mr. Cordes:

I am writing on behalf of Washington, South Carolina, Aiken County, and the Ferguson petitioners in the consolidated matter *In re: Aiken County*, No. 10-1050 (DC Cir.).

We have become aware of information suggesting that the staff of the Nuclear Regulatory Commission (NRC), apparently at the direction of Chairman Jaczko, has ceased (or is in the process of ceasing) work it has been conducting in relation to the Department of Energy's (DOE's) application to license a proposed repository for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. This includes, but may not be limited to, the NRC staff's review of DOE's license application materials and the NRC staff's preparation of Safety Evaluation Reports.

We are writing to ask that you confirm whether or not this information is accurate. We are directing our inquiry to you, rather than the NRC directly, based on the fact that our question relates to a matter in litigation in which you represent the NRC, among other respondents. In responding, we request that you honor the spirit of our question, rather than splitting any technical hairs in how our question is framed. In our opinion, this information is relevant to our mutual obligation to continue to inform the D.C. Circuit Court of Appeals of the status of the administrative matter before the NRC.

We ask that you please respond on or before Monday, October 11, 2010. Thank you in advance for your cooperation.

Sincerely,

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

AAG:dmm
cc: All parties of record in the consolidated matter
In re: Aiken County, No. 10-1050 (DC Cir.)

\\YUCCA MOUNTAIN\CORRESPONDENCE\DURKEE.NRC.LETTER

Kenneth C. Rogers, Ph. D.

6202 Perthshire Court

Bethesda, MD 20817

TEL 301-530-4489
FAX 301-530-4033
e-mail krogers6@earthlink.net

Oct. 8, 2010

Mr. Hubert Bell, Inspector General

U.S Nuclear Regulatory Commission

Washington, DC 20555-0001

Dear Mr. Bell:

I have enclosed a copy of a letter that I have sent to Chairman Jaczko and all other Commissioners expressing my concerns.

I respectfully request that your office initiate a review of Chairman Jaczko's recent unilateral actions to terminate the NRC Staff's review of the DOE Yucca Mountain application in order to determine whether any legal or other improprieties have been committed.

Sincerely yours,

Kenneth C. Rogers

Commissioner, U.S. Nuclear Regulatory Commission 1987-1997

cc: Chairman Jaczko

Kenneth C. Rogers, Ph. D.

6202 Perthshire Court

Bethesda, MD 20817

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Oct. 8, 2010

The Honorable Gregory B. Jaczko, Chairman

U.S Nuclear Regulatory Commission

Washington, DC 20555-0001

Dear Chairman Jaczko:

A number of bits and pieces of news concerning NRC have come to my attention that have given me sufficient serious concern to decide to communicate my views directly to you.

For a number of decades the U.S. Nuclear Regulatory Commission has led the world in the safety regulation of the civilian use of nuclear materials and systems. NRC is held in high esteem worldwide for its demonstrated technical capability and unbiased independence.

In January of 1991, the Commission promulgated a set of Principles of Good Regulation that I believe have provided guidance to Commissioners and staff to this time. They have been publicly cited as model guidance by Commissioners as well as to Commissioners.

The very first of those five Principles is: *INDEPENDENT. Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.*

The wisdom of a Commission composed of five independent Commissioners; each with his/her own staff to provide support for his/her votes (each of equal weight) on all matters of relevant policy, has been demonstrated time after time. The Nuclear Regulatory Commission is an Independent Agency. It is not a

Department headed by a Single Administrator who makes decisions single handedly. Occasionally an NRC Chairman has chafed under the necessity of persuading his/her fellow Commissioners to agree and to vote with the Chairman on issues on which unanimity could not be easily achieved. However, such a check on a Chairman's strong - but possibly flawed - views has sometimes avoided decisions that in hindsight would have been clearly and seriously unwise. In my ten years of service as an NRC Commissioner, I had ample opportunity to witness the value of the Commission structure and of the Commissioners' independence.

I am deeply concerned that the independence of the Commission and thereby its integrity are under external attack, and moreover that internally the judgments of each of the Commissioners on an important policy matter are being circumvented.

Through the determined insistence by each Commissioner of adherence to the letter and spirit of the Principle of Independence these threats can be overcome, and the integrity and respect for the U.S. Nuclear Regulatory Commission saved from what could be a blunder of historic proportions.

I urge you to commit yourself to that objective.

Sincerely yours,

Kenneth C. Rogers

Commissioner US Nuclear Regulatory Commission 1987 - 1997

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

October 8, 2010

OFFICE OF THE
COMMISSIONER

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood

FROM: Commissioner Ostendorff

SUBJECT: DISAGREEMENT WITH STAFF BUDGET GUIDANCE UNDER FISCAL YEAR 2011 CONTINUING RESOLUTION

The purpose of this memorandum is to record my disagreement with guidance given to the NRC Staff related to the fiscal year 2011 Continuing Resolution (CR). The contents of this memorandum are consistent with a memorandum to file I signed on October 6, 2010.

On October 4, 2010, the EDO and CFO issued a memorandum to the Staff providing direction on the fiscal year 2011 Continuing Resolution. This memorandum stated that "[w]ith respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the fiscal year 2011 budget request using available Nuclear Waste Fund resources during the CR." On October 6, 2010, I issued COMWCO-10-0002 for the Commission's consideration to provide specific direction to the staff with respect to this guidance, but I wanted to write separately to express my strong personal disagreement with the direction given to the Staff by this guidance.

I believe it is inconsistent with the intent of the Continuing Resolution to direct the Staff to follow direction in the budget request for fiscal year 2011. My conclusion comes not only from a plain reading of the Continuing Resolution and applicable guidance, but also from my past experience as Principal Deputy Administrator at NNSA and as counsel for the House Armed Services Committee. With respect to the fiscal year 2011 Continuing Resolution, Section 101 expressly provides that the funds to be appropriated are those "as provided in the applicable appropriations Act for fiscal year 2010 and under the authority and conditions provided in such Acts, for continuing projects or activities ... that are not otherwise specifically provided for in this Act...." (emphasis added). Absent any express exception in the Continuing Resolution, the NRC is obligated to follow its fiscal year 2010 budget ... including any Commission direction contained in that budget. The Continuing Resolution does not specifically provide for the NRC to follow its yet-to-be-approved fiscal year 2011 budget request, nor does it even specifically mention the NRC or the High-Level Waste repository review. Thus, under the express language of the Continuing Resolution, special treatment for this activity is "not otherwise specifically provided for." A basic canon of statutory construction is *expressio unius est exclusio alterius*: the express mention of one thing excludes all others. Congress expressly outlined all of the exceptions to the general rule in Section 101 that agencies should follow their fiscal year 2010 budgets, and the NRC's High-Level Waste Program is not one of those exceptions, therefore

making the fiscal year 2010 budget direction operable.

Further, Section 104 of the Continuing Resolution states that "except as otherwise provided in Section 102, no appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during fiscal year 2010." This prohibition reinforces the view that the NRC is to stay the course with respect to how it was undertaking projects or activities during the Continuing Resolution. The Commission's fiscal year 2010 budget specifies that fiscal year 2010 funds will be used to "support the ongoing license review by funding the NRC staff conducting technical license application review activities...." I strongly object to using funds during the Continuing Resolution for a reason inconsistent with this stated purpose, such as "orderly closure" of the licensing review. Commencing orderly closure is not, in my opinion, "conducting technical license application review activities," and therefore is entirely inconsistent with the intent of the Continuing Resolution.

In addition to a plain reading of the Continuing Resolution, this view is also supported by guidance from the Office of Management and Budget (OMB). Section 123 of OMB Circular A-11, for example, states that normally, "the continuing resolution limit[s] the purposes for which funds may be obligated." Circular A-11 goes on to explain that "[a] CR makes amounts available subject to the same terms and conditions specified in the enacted appropriations acts from the prior fiscal year.... Normally, you are **not** permitted to start new projects or activities." (emphasis in original). Therefore, it is my opinion that under the Continuing Resolution the staff should continue to follow the Commission's direction in the fiscal year 2010 budget as authorized and appropriated by Congress, rather than change course as suggested in the Continuing Resolution guidance memorandum.

The relevance of the fiscal year 2011 budget request is limited to determining the rate at which the programs and activities are to be funded during the Continuing Resolution, not to determine that the programs and activities should be conducted in accordance with direction that is contained in the fiscal year 2011 budget request. To the extent that budget direction in the fiscal year 2011 budget request should be followed (a position I do not agree with), the conditions in that budget request that would authorize "orderly closure" have not been met. The fiscal year 2011 budget request clearly states that such closure would not begin until "withdrawal or suspension of the licensing review...." Since the issue of whether the application may be withdrawn is currently before the Commission and a final decision has not been rendered, that condition clearly has not been met.

cc: EDO
CFO
OGC
SECY
OCAA

JOHN M. SPRATT, JR., SOUTH CAROLINA
CHAIRMAN

THOMAS S KAHN, STAFF DIRECTOR
AND CHIEF COUNSEL
(202) 226-7200

PAUL RYAN, WISCONSIN, RANKING MEMBER

AUSTIN SMYTHE, REPUBLICAN STAFF DIRECTOR
(202) 226-7270

U.S. House of Representatives

COMMITTEE ON THE BUDGET

Washington, DC 20515

October 11, 2010

The Honorable Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

Dear Chairman Jaczko:

I am writing to express my deep concerns with reports that the Nuclear Regulatory Commission (NRC) staff has been instructed to cease the review of the Department of Energy's (DOE) application for a license to operate a nuclear waste repository at Yucca Mountain, Nevada. As you know, there are several pending lawsuits on this matter, and the commission has not ruled on the Atomic Safety and Licensing Board's determination that DOE cannot legally withdraw the application. I urge you to ensure that NRC's review of the application be continued.

On July 27, 2010, I called a hearing before the Budget Committee to hear testimony from the Congressional Budget Office and the Departments of Energy and Justice on the budget implications of ending this project. I came away from that hearing more convinced than ever that terminating Yucca Mountain would be a costly mistake that would maintain the storage of high-level nuclear waste indefinitely at more than one hundred sites across the nation, including those in South Carolina.

Nearly 3,800 metric tons of uranium is stored at four nuclear plants that are home to seven reactors in South Carolina alone. Since 1998, the U.S. government has been legally obligated to remove waste from these sites and about one hundred others nationwide. The Federal government also is legally required to remove defense nuclear waste from the nuclear weapons complex, including the Savannah River site. However, the government has not met its obligation yet, even though Congress decided that Yucca Mountain is the appropriate site for this waste. In response, the State of South Carolina and Aiken County, South Carolina, have filed lawsuits on this matter that remain pending in court.

I remain strongly opposed to the Administration's actions to terminate the Yucca Mountain project and urge the NRC to move forward in fulfilling its duty to review the license application.

Sincerely,

John M. Spratt, Jr.
Chairman

(202) 226-7200 207 Cannon House Office Building e-mail: budget@mail.house.gov

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

NWSC
Nuclear Waste Strategy Coalition

October 12, 2010

Letter sent via email.

The Honorable Pete Domenici
Co-Chairman
Blue Ribbon Commission
Reactor and Fuel Cycle Technology Subcommittee
Department of Energy
Washington, D.C. 20585-1000

Mr. Per Peterson
Co-Chairman
Blue Ribbon Commission
Reactor and Fuel Cycle Technology Subcommittee c/o
c/o Department of Energy
Washington, D.C. 20585-1000

Re: October 12 Meeting.

Dear Senator Domenici and Mr. Peterson:

The members of the Nuclear Waste Strategy Coalition (NWSC) are encouraged that the Blue Ribbon Commission Reactor and Fuel Cycle Technology Subcommittee, continues to hear from nuclear industry representatives, scientists and distinguished experts sharing their perspective and knowledge with regards to the future of reactor and fuel cycle technology, proliferation and security risks.

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

This Subcommittee's commitment is admirable in that it is trying to find solutions to reduce the 62,000 tons of SNF currently stranded at 121 sites in 39 states.

Advancing the recycling program in the U.S. would alleviate the problem of SNF and HLRW stranded at decommissioned, operating commercial plants, as well as DOE facilities. However, the recycling of spent fuel and interim storage facilities are not a substitute for a permanent repository.

As the Subcommittee is aware, SNF is not waste and most of which is recyclable. The U.S. invented the recycling technology from which other countries are now benefiting. We are still pondering whether we should recycle, when we should recycle, and the type of recycling technology that would be economic, be safe, protect the environment, and address security and non-proliferation concerns.

Since 1994, the NWSC has been advocating the removal of this Program from DOE and the protection of the ratepayers' fees paid into the Nuclear Waste Fund (NWF) through their electric bills. A recent study by the Massachusetts Institute of Technology also recommended the removal of this Program from DOE and the establishment of an independent quasi-government corporation, thus freeing it from politics and the annual appropriations cycle.

P.O. Box 5233 • Pinehurst, NC 28374 • Tel: 910.295.6658 • Fax: 910.295.0344 • Email: thenwsc@nc.rr.com
www.thenwsc.org

Until Congress amends the 1982 Nuclear Waste Policy Act, as amended, the NWSC continues to advocate that an effective Program should consist of a permanent repository at the Yucca Mountain site; an integrated transportation plan; and centralized interim facilities that advance and complement the permanent repository while addressing near-term needs. However, centralized interim storage is not a substitute for a permanent repository and should be considered as a short-term solution only. We further advocate consensus among the Federal government, state and local officials, stakeholders and local communities, as well as sustainable support for the siting and operation of such an interim storage and recycling facilities.

The Subcommittee should also take into its deliberations that:

(a) The nation's ratepayers are paying more than $770 million annually into the NWF. Ratepayers from 41 states have already paid more than $34 billion, including interest, into the NWF for the removal of SNF and HLRW during this generation.

(b) The Courts have already ruled that the Federal government is liable for the added storage costs resulting from the DOE's failure to remove SNF and HLRW by dates agreed to in the original contracts with nuclear electric utilities. The DOE already faces more than $2 billion in court judgments and legal expenses resulting from the 1998 failure to meet its contractual and statutory obligations to remove SNF and HLRW from plant sites. The Department of Justice officials further estimate that current liabilities for 72 cases could reach $13 billion, growing further by $500 million for each additional year of delay. These liabilities are paid from the Judgment Fund.

c) The consequences of the Federal government's failure to construct a permanent repository is that ratepayers are paying up to four times for ongoing spent fuel storage and future disposal – and that does not include decommissioning funds:

- (i) While the DOE is trying to withdraw with prejudice its license application from the Nuclear Regulatory Commission, the ratepayers continue to pay into the NWF for storage at the deep geologic repository.
- (ii) Due to the 1998 delay, ratepayers have to pay through rates to expand and re-rack their existing cooling pools in order to accommodate more spent fuel.
- (iii) The ratepayers are continuing to pay through rates to keep the spent fuel stored at the existing plant sites in dry cask storage.
- (iv) All taxpayers – not just ratepayers – are paying through taxes for judgments and settlements through the Judgment Fund.

We should not continue to pass this problem on to future generations – action can and should be taken in the near term to address the nation's SNF and HLRW problem.

The members of the NWSC thank you for the opportunity to submit our input. We look forward to the opportunity to continue working with and providing further input to the Blue Ribbon Commission Reactor and Fuel Cycle Technology Subcommittee.

Respectfully yours,

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

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

Congress of the United States
Washington, DC 20515

October 13, 2010

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

Dear Chairman Jaczko:

We are writing to express our concern regarding reports that you are unilaterally halting the Nuclear Regulatory Commission's (NRC) review of the Department of Energy's (DOE) license application for the nuclear waste repository at Yucca Mountain.

Recent media reports assert that you directed NRC staff to begin terminating review of DOE's license application, consistent with the language of the Fiscal Year 2011 (FY11) budget request, despite the fact that Congress has yet to approve the FY11 budget.[1] This action has been justified in a guidance memo which argues, "the [continuing resolution] legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget..."[2] However, basing funding and operational decisions on submitted budget requests, not appropriations bills signed into law, is suspect. Even the NRC spokesman, David McIntyre, noted that he was "not sure whether there was a precedent for [your] decision."[3]

Your directive is even more alarming given the current status of the license application. As you know, the Atomic Safety and Licensing Board (ASLB) rejected DOE's motion to withdraw the license application on June 29, 2010. According to the ASLB, DOE lacks the authority to overrule clear Congressional intent for NRC to review the license application of Yucca Mountain as a nuclear waste repository. As you know, Congress passed the Nuclear Waste Policy Act of 1982 (NWPA) to centralize the long-term management of nuclear waste, including construction of a safe and permanent nuclear waste repository. In 1987, Congress amended the NWPA by designating Yucca Mountain as the only option for a longer-term storage site by a vote of 237–181 in the House of Representatives and 61–28 in the Senate. Congress reaffirmed Yucca Mountain's designation as the only option for a long-term storage site in 2002 by a vote of 306–117 in the House of Representatives and 60-39 in the Senate. Again in 2007, the House of Representatives overwhelmingly rejected, by a vote of 80-351, an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program. Additionally, on July 6, 2010, 91 Members of Congress sent DOE a letter expressing concern with their decision to immediately close Yucca Mountain.

The commissioners have not yet issued a ruling on appeal; therefore, unless the commission overturns the ASLB decision, the NRC must consider the license application. Your unilateral

[1] http://www.lvrj.com/news/nrc-chairman-directs-stoppage-of-yucca-review-104458878.html
[2] U.S. Nuclear Regulatory Commission, "Guidance Under a Fiscal Year 2011 Continuing Resolution." October 4, 2010.
[3] http://www.eenews.net/Greenwire/2010/10/07/4/

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decision silences the opinions of the other commissioners on the pending appeal. Further, legal challenges in federal court are imminent, pending final action from the NRC. Your directive gives the appearance of coordinated action between you and DOE, which suggests an additional level of impropriety.

In light of the reports, we request answers to the following questions:

1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?
2. What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?
3. How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?
4. How will your decision impact future legal challenges to DOE's motion to withdraw?
5. How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?
6. What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House?

Please respond by October 27, 2010. We appreciate your cooperation.

Sincerely,

Jim Sensenbrenner
Ranking Member
Select Committee on Energy Independence and Global Warming

Joe Barton
Ranking Member
Energy and Commerce Committee

Ralph Hall
Ranking Member
Science and Technology Committee

Doc Hastings
Ranking Member
Natural Resources Committee

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

OFFICE OF THE
GENERAL COUNSEL

October 13, 2010

Andrew A. Fitz
Senior Counsel
Office of the Attorney General of Washington
2425 Bristol Court, SW, 2d Floor
Olympia, WA 98504-0017

Dear Mr. Fitz

Your letter of October 6, 2010, asked whether the Nuclear Regulatory Commission (NRC) staff, "apparently at the direction of Chairman Jazcko, has ceased (or is in the process of ceasing) work" on the Department of Energy's (DOE's) application for NRC approval of a high-level waste facility at Yucca Mountain, Nevada. Pointing to "media accounts," your follow-up letter on October 7 sought certain "written materials" "concerning cessation of license application review."

I have enclosed an October 4, 2010, memorandum signed by both the NRC's Chief Financial Officer, James E. Dyer, and the NRC's Executive Director for Operations, Richard W. Borchardt. The Dyer-Borchardt memorandum provides guidance to NRC staff offices on budget execution, given that Congress has not yet acted on NRC's Fiscal Year 2011 budget submission. The agency currently is operating under a Continuing Resolution (CR) that expires on December 3 (Pub. L. 111-242, 124 Stat. 2607 (Sept. 30, 2010)).

With respect to the high-level waste program, the Dyer-Borchardt memorandum states that the CR "does not include specific restrictions on spending funds." It then directs the NRC staff to "continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR."

The Commission's proposed FY 2011 budget – issued in early 2010 and available on NRC's website – pointed to DOE's possible filing of a motion to withdraw its Yucca Mountain application, and sought sufficient resources (ten million dollars) for "orderly closure" of NRC's effort. *See* NUREG-1100, Volume 26, *Congressional Budget Justification for FY 2011* (Feb. 2010), at pp. 9-10, 55-57, 94-95. "This would involve archiving material, completion of some technical work, knowledge capture and management, and maintenance of certain electronic systems to support these efforts." *Id.* at 95.

I cannot provide further information on this subject in advance of Commission consideration of the "Motion for a Commission Order Restoring the Technical Review of

the Yucca Mountain License Application" that you, along with your colleagues representing South Carolina and Aiken County, filed late last week. In addition, related issues remain before the Commission on Nevada's "Petition for Relief with Respect to Possible Issuance of a Partial Safety Evaluation Report for Yucca Mountain" (filed June 14, 2010).

As for your request for a copy of written communications to the NRC staff from Chairman Jazcko or from other NRC Commissioners "concerning the cessation of license application review," I have inquired and identified no such documents. Your letter also seeks documents containing staff-to-staff communications. Other than the enclosed Dyer-Borchardt memorandum, I am aware of no such documents, but I hasten to add that I have not surveyed the entire NRC staff, which is quite large.

To avoid any future misunderstanding, please do not construe my response to your inquiry as agreement with the suggestion in your October 6 letter that information on NRC budget execution during the CR period relates to your pending litigation or falls under any mandatory-disclosure obligation. As you know, the Federal Rules of Appellate Procedure provide for no discovery in direct-review actions in the courts of appeals. The NRC maintains a public website, where many NRC documents are publicly available, as well as a Freedom of Information Act program enabling the public to seek additional agency records.

Sincerely,

John F. Cordes
Solicitor

cc: Service list in *In re Aiken County*, No. 10-1050 & consolidated cases (D.C. Cir.)

Sustainable Fuel Cycle
TASK FORCE

www.sustainablefuelcycle.com

Sustainable Fuel Cycle Task Force Science Panel

October 14, 2010

Dear Chairman Jaczko,

On behalf of the Sustainable Fuel Cycle Task Force Science Panel, we are writing to you and your fellow Commissioners to express our strong objection to the NRC staff being directed to stop work on the nearly completed Volume III Yucca Mountain Safety Evaluation Report. We urge that the NRC staff be allowed to complete their work in accordance with the Nuclear Waste Policy Act.

The NRC has spent over $500 million dollars during the last 25 years examining the public health and safety aspects of Yucca Mountain and is now just weeks away from reaching very important scientific conclusions regarding the long term performance of the site. The public and scientific community has a right to know the NRC staff conclusions regarding their comprehensive analyses of the performance of the site relative to the stringent NRC and EPA regulations.

We understand the Administration would like to withdraw the Yucca Mountain license application, but it has not been withdrawn. Furthermore, the Atomic Safety and Licensing Board has determined that the Nuclear Waste Policy Act dictates that the application may not be withdrawn and that licensing continue unless Congress changes the statute. There has been no Congressional action to justify halting the ongoing staff review, thus the staff scientific work to complete their Safety Evaluation Report sections should be allowed to continue.

The global scientific community has great respect for the technical competence of the NRC staff and deserves to see the results of the staff's regulatory performance findings. The NRC staff and the Commission have a long-standing tradition of independence from considerations of cost, schedule, and political influence when rendering its decisions and in providing complete and accurate information to the public.

We respectively request that the Commission reverse the "stop work" direction and allow the staff to finish their work and release their findings to the public. Free, open and transparent access to all scientific information is a critical foundation for the establishment of an effective waste disposal program for the future.

Sincerely,
Science Panel

Isaac Winograd, Ph.D.

Wendell Weart, Ph.D.

Eugene H. Roseboom Jr., Ph.D.

Charles Fairhurst, Ph.D.

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

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: COMWCO-10-0002 – COMMISSION DIRECTION ON STAFF BUDGET GUIDANCE UNDER FISCAL YEAR (FY) 2011 CONTINUING RESOLUTION

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___

SIGNATURE

10/14/10
DATE

Entered on "STARS" Yes ✓ No ___

Commissioner Svinicki's Comments on COMWCO-10-0002
Commission Direction on Staff Budget Guidance Under
Fiscal Year 2011 Continuing Resolution

I approve Commissioner Ostendorff's proposal, contained in COMWCO-10-0002, that during the pendency of the Fiscal Year 2011 Continuing Resolution, the staff continue to follow its schedule for completing and issuing the Safety Evaluation Report (SER) volumes and further, that the staff continue to work on any remaining SER volumes until fiscal year 2010 funds are exhausted. I agree that, whatever the ultimate disposition of the Yucca Mountain license application and associated activities, complete SER documents should be a matter of public record and will be the best vehicle to memorialize the scientific knowledge and analysis gained during the technical review. Consequently, the staff should continue to work on and issue the remaining SER volumes according to its stated schedule, at the rate for operations appropriate given the proposed fiscal year 2011 budget, as augmented by prior year high-level waste (HLW) carryover funds and fiscal year 2010 reprogrammed HLW funds remaining from fiscal year 2010 appropriations.

I fundamentally disagree with the direction contained in the October 4, 2010 memorandum, issued by the Executive Director for Operations and Chief Financial Officer, instructing Staff to follow the Commission's fiscal year 2011 budget direction for carrying out HLW review activities during the continuing resolution. I find this directive inconsistent with the intent of the Continuing Resolution. Section 101 of the Fiscal Year 2011 Continuing Resolution provides that the funds to be appropriated are those "as provided in the applicable appropriations Act for fiscal year 2010 and under the authority and conditions provided in such Acts, for continuing projects or activities . . . that are not otherwise specifically provided for in this Act." Since the Continuing Resolution does not specifically provide for the NRC to follow its fiscal year 2011 budget request, nor does it provide specific limitations on the use of HLW funds, the NRC should continue to carry out the Yucca Mountain review activities in accordance with its fiscal year 2010 budget to "support the ongoing license review by funding the NRC staff conducting technical license application review activities."

In contrast, the fiscal year 2011 budget request – which is currently sitting before Congress – describes the "orderly closure" of technical review activities, including knowledge capture and management, and archiving of material. But this is not all that the fiscal year 2011 budget states with respect to the HLW program. It also explains that "orderly closure" activities are conditioned upon certain events taking place first: "Upon withdrawal or suspension of the licensing review, the NRC would begin an orderly closure..." Neither of these events has occurred, and commencing closure activities now is contrary to the Commission's express direction. Therefore, my view on the appropriate scope of activities under the continuing resolution is further fortified by the fact that the conditions for transitioning to orderly closure of the review have not been met.

Furthermore, at the time of the Commission's deliberations on the fiscal year 2011 budget proposal, the Administration was contemplating options for the Yucca Mountain license application and the Department of Energy (DOE) had not submitted its motion to withdraw. My approval of the fiscal year 2011 budget proposal was predicated on continuing the technical review of the application, while recognizing that the NRC's ability to do so was influenced by other imponderables, such as DOE's ability to support the review. The "fog of war" environment that clouded the future of the Yucca Mountain license application could not, and did not, anticipate with any precision the circumstances that the NRC faces today.

Ultimately, I agree that this is a significant policy matter warranting Commission deliberation and action. In my opinion, we would have been better served had the CR guidance memorandum, at the very least, requested Commission direction on the use of Nuclear Waste Fund resources during the continuing resolution. Absent that request, however, I support fully Commissioner Ostendorff's proposal.

Kristine L. Svinicki 10/19/10

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

October 16, 2010

The Honorable Warren F. Miller, Jr.
Assistant Secretary for Nuclear Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Dear Dr. Miller:

The U.S. Nuclear Waste Technical Review Board held a public meeting in Idaho Falls, Idaho, on June 29, 2010. The principal topics were (1) management and ultimate disposition of the spent nuclear fuels (SNF) and high-level radioactive wastes (HLW) that are the responsibility of the U.S. Department of Energy's Idaho Operations Office (DOE-ID) and the Naval Nuclear Propulsion Program and (2) future technologies and activities that could affect the amounts and forms of SNF and HLW that will require management and disposal or could affect the radioactive hazard levels of the SNF and HLW over time.

Several of the 11 people who made presentations at the meeting were employees of DOE's Office of Nuclear Energy (DOE-NE). We greatly appreciate their participation and the quality of their presentations.

The Board was established as an independent federal agency in the 1987 amendments to the Nuclear Waste Policy Act. The Board's statutory role is to review the technical validity of activities undertaken by the Secretary of Energy related to implementation of the Nuclear Waste Policy Act. The Board reports its findings and recommendations to Congress and the Secretary of Energy at least twice a year. According to the legislative history, the Board is expected to make its recommendations before decisions are made, not after the fact. Thus, the Board established a practice many years ago of sending a follow-up letter after each of its public meetings to the appropriate DOE program managers. This letter continues that practice.

Extended Storage and Subsequent Transportation of SNF

When a repository or storage location for SNF will be available is not known at this point, and that uncertainty may continue well into the future. The Board believes that studies should be undertaken to identify and plan for actions that are needed for preventing problems from occurring during the transportation, repackaging, or disposal of SNF following *extended* periods of dry storage. Studies of the safety, cost, and technical issues associated with various alternatives for managing, packaging, and transporting the SNF also would be invaluable to the Blue Ribbon Commission for America's Nuclear Future, to the Office of Environmental Management for its long-term planning, and to the Board in setting priorities for its technical peer review.

DOE-NE's Used Nuclear Fuel Disposition Program

The Board realizes that the Used Nuclear Fuel Disposition Program is still in its formative phase and may be affected by congressional direction and funding for fiscal year 2011. A program that identifies alternatives and conducts scientific research and technology development to enable and optimize storage, transportation, and disposal of SNF and HLW generated by existing and future nuclear-fuel cycles would be helpful to decision-makers and technology-implementers. Each element of the program should have clear objectives and be integrated with other DOE-NE programs, particularly those of the Office of Fuel Cycle Research and Development.

Some aspects of DOE-NE's Used Nuclear Fuel Disposition Program proposed for fiscal year 2011 appear similar to the Science & Technology (S&T) Program that DOE's Office of Civilian Radioactive Waste Management (DOE-RW) established in 2003. The S&T Program was explicitly distinct from the mainline DOE-RW activity of developing an application for a license to construct a repository at Yucca Mountain. The goals of the S&T Program were to (1) improve existing technologies and develop new technologies for achieving efficiencies and savings in the waste management system and (2) increase fundamental understanding of repository performance. Although intended to be permanent, the program was suspended in 2008, just when it had assembled several teams of highly qualified engineers and scientists who were producing significant results. The Board strongly endorsed the S&T program. In the Board's view, the need for a similar effort, such as the one being defined by the Used Nuclear Fuel Disposition Program, is even greater now because the scope of scientific and technical options has grown substantially. However, the experience of the S&T program demonstrates that a fully successful program requires continuity.

According to the proposed fiscal year 2011 budget for the Used Nuclear Fuel Disposition Program presented at the meeting, $12 million is allocated to "science programs transferred from RW to NE." Because the level of science activity in the fiscal year 2010 DOE-RW program appears much smaller, the Board would appreciate receiving more information about the science programs that will be transferred from DOE-RW to DOE-NE.

Thank you for helping make the Board's meeting in Idaho Falls a success.

Sincerely,

B. John Garrick
Chairman

Congress of the United States
Washington, DC 20515

October 19, 2010

Mr. Hubert T. Bell
Inspector General of the Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20852

Dear Mr. Bell,

Recent news reports have indicated that Chairman Gregory Jaczko is delaying a ruling on whether the Department of Energy has the legal authority to withdraw the license for the Yucca Mountain Repository in Nevada. Because of these reports, we are asking you to convene a formal investigation into the Chairman's recent actions to shut down the project.

As you know, Yucca Mountain was designated as the nuclear waste repository by the United States Congress in legislation signed by the President as part of the Nuclear Waste Policy Act of 1982 (NWPA), as amended in 1987. In 2002, Congress passed a Joint Resolution reaffirming the site as the country's nuclear waste repository. Despite these actions and the fact that Congress to date has continued to provide funding for Yucca Mountain, the actions by the Chairman make us concerned that he has overstepped his authority by making a decision to terminate the review of the license application based on his FY 2011 budget request, which has yet to be approved by Congress. We are concerned that this unilateral decision by the Chairman is undermining the intent of the Congress and possibly the Commission, as it is our understanding that at least one Commission member has issued a memo detailing his objections to the Chairman's actions.

Countless times Congress has reaffirmed that we must have a permanent storage site to protect the public and the environment, as well as to continue to develop nuclear power in the United States. Nuclear power accounts for twenty percent of our electricity supply and is expected to grow substantially in the next several decades. Additionally, the average nuclear plant generates approximately $430 million in the local community and the operation of a nuclear plant creates 400 to 700 permanent jobs. Any delay to advance nuclear power places our economy and national security at risk. Playing political games with this issue, which has been suggested in the news, has already cost taxpayers $1 billion through lawsuits filed and that number is expected to increase to over $50 billion in the next twenty years, not to mention that the federal government has already spent $9 billion constructing the Yucca Mountain project and this would also be wasted money. At a time when we have a nearly $14 trillion debt, these actions are unwise and deserve your attention. Therefore, we appreciate your fair and expedited review of the Chairman's actions and this situation.

Thank you for your attention to this matter.

Fred Upton
Member of Congress

Ed Whitfield
Member of Congress

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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515–6015

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CLERK AND STAFF DIRECTOR
BEVERLY PHETO

TELEPHONE:
(202) 225-2771

October 20, 2010

The Honorable Gregory B. Jaczko
Chairman
United States Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC. 20555-0001

Dear Chairman Jaczko:

We are writing to protest your premature and partisan closure of the Nuclear Regulatory Commission's (NRC's) consideration of the Yucca Mountain license application. We are concerned that your actions call into question whether the NRC, under your leadership, will be able to maintain its historical role as an independent regulatory and oversight body. If continued, your actions may seriously erode the NRC's relationship with this subcommittee.

On October 4, 2010, NRC's staff received your guidance on program execution during the fiscal year 2011 continuing resolution (CR). Your direction states that, "...staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget...". You were also recently quoted as saying, "From an administrative standpoint I'm moving the agency to close down because that's really what our Fiscal

Year 2011 budget guidance is. That process will continue absent some other direction from Congress."

Mr. Chairman, the NRC's fiscal year 2011 budget request is irrelevant under the CR. Congress has approved only your fiscal year 2010 budget request, which did not include funding to shut down the Yucca Mountain license application. We expect that you will continue your fiscal year 2010 activities until Congress provides you additional funding and direction. Furthermore, we question the responsibility of your actions, considering that the NRC's Atomic Safety and Licensing Board has rejected the Department of Energy's motion to withdraw the application and you and your fellow Commissioners have not overturned this decision.

It is our constitutional duty to provide funding, oversight, and at times explicit direction on how the Commission, or any governmental agency, for that matter, executes its programs. If you continue to shut down the Yucca Mountain license application, which can only be seen as a partisan act, we will reconsider the flexibilities which the NRC has long enjoyed due to its reputation as an independent body.

Sincerely,

Jerry Lewis
Ranking Member
House Appropriations Committee

Rodney P. Frelinghuysen
Ranking Member
House Appropriations Committee
Subcommittee on Energy
and Water Development

Zach Wamp
Member
House Appropriations Committee
Subcommittee on Energy
and Water Development

Michael K. Simpson
Member
House Appropriations Committee
Subcommittee on Energy
and Water Development

Dennis R. Rehberg
Member
House Appropriations Committee
Subcommittee on Energy
and Water Development

Ken Calvert
Member
House Appropriations Committee
Subcommittee on Energy
and Water Development

Rodney Alexander
Member
House Appropriations Committee
Subcommittee on Energy
and Water Development

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

October 21, 2010

The Honorable Inés R.Triay
Assistant Secretary for Environmental Management
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Dear Dr. Triay:

The U.S. Nuclear Waste Technical Review Board held a public meeting in Idaho Falls, Idaho, on June 29, 2010. The principal topics were (1) management and ultimate disposition of the spent nuclear fuels (SNF) and high-level radioactive wastes (HLW) that are the responsibility of the U.S. Department of Energy's Idaho Operations Office (DOE-ID) and the Naval Nuclear Propulsion Program and (2) future technologies and activities that could affect the amounts and forms of SNF and HLW that will require management and disposal or could affect the radioactive hazard levels of the SNF and HLW over time.

Several of the 11 people who made presentations at the meeting were employees of DOE-ID. We greatly appreciate their participation and the quality of their presentations.

The Board was established as an independent federal agency in the 1987 amendments to the Nuclear Waste Policy Act. The Board's statutory role is to review the technical validity of activities undertaken by the Secretary of Energy related to implementation of the Nuclear Waste Policy Act. The Board reports its findings and recommendations to Congress and the Secretary of Energy at least twice a year. According to the legislative history, the Board is expected to make its recommendations before decisions are made, not after the fact. Thus, the Board established a practice many years ago of sending a follow-up letter after each of its public meetings to the appropriate DOE program managers. This letter continues that practice.

DOE-ID Spent Nuclear Fuel

Much of the SNF under the jurisdiction of DOE-ID already is in dry storage, and plans are under way to move the remaining SNF to dry storage. The Board has not identified any immediate technical issues with dry storage of this SNF. However, the Board recommends that the as-built lifetimes (as opposed to the design lifetimes) of all SNF dry-storage systems under DOE-ID's responsibility be assessed because it is not known at this point when a repository or storage location outside Idaho will be available, and that uncertainty may continue well into the future. In addition, the Board believes that studies should be undertaken to identify and plan for actions that are needed for preventing problems from occurring during the transportation, repackaging, or disposal of SNF following *extended*

periods of dry storage. Studies of the safety, cost, and technical issues associated with various alternatives for managing, packaging, and transporting the SNF also would be invaluable to the Blue Ribbon Commission for America's Nuclear Future, to the Office of Environmental Management for its long-term planning, and to the Board in setting priorities for its technical peer review.

DOE's National Spent Nuclear Fuel Program carried out extensive work in developing packaging systems that would be acceptable for disposal in a repository at Yucca Mountain. Whether the size, materials of construction, or other attributes of packaging developed for the Yucca Mountain repository would be suitable for other geologic disposal media is not known. Consequently, analysis of the issues associated with disposing of DOE-ID and other DOE-owned SNF in geologic settings other than unsaturated tuff would be appropriate. The Board recommends that DOE undertake such studies. This would include reexamination of studies performed more than 25 years ago in the United States as well as examining more-recent geologic disposal efforts of other countries.

DOE-ID Calcine

Virtually all of the liquid HLW at Idaho National Laboratory was calcined years ago into a solid granular form and is being stored in shielded bins. The design lifetime of the bin storage system is asserted to be 500 years. Designing a civil system made from ferrous alloys and concrete for such a period is unprecedented. The technical basis for the design lifetime estimate should be examined in detail, and the results of the examination — including any assumptions regarding inspection and maintenance frequencies — should be conveyed to the programs within DOE carrying out research on very-long-term dry storage. The results also should be transmitted to outside entities now carrying out such research, including the Electric Power Research Institute and the U.S. Nuclear Regulatory Commission.

In December 2009, DOE decided to treat the calcine by hot isostatic pressing before transporting it off the site. The decision was based in part on a cost estimate comparing various treatment alternatives. A key technical assumption affecting this decision was that treated calcine would be loaded into "standardized canisters" (2 feet in diameter by 10 feet or 15 feet long) that would subsequently be loaded into larger outer containers for storage, transportation, and disposal. This assumption may not be necessary for some treatment methods yet may increase the number of containers requiring storage, transportation, and disposal. In addition, it is not clear whether the operational risk of various treatment options was taken into account or whether probabilistic risk assessments (PRAs) were performed on the safety of the various alternatives after disposal in a repository. The Board believes that another cost comparison should be conducted that takes into consideration appropriate technical assumptions and the aforementioned risks.

DOE-ID Sodium-Bearing Waste

Whether sodium-bearing waste (SBW) is a high-level waste remains an open matter that appears to be more of a regulatory issue than a technical one. Perhaps a risk assessment could help in the determination. In any case, we agree that changing the SBW from its current liquid form to a solid form is necessary.

More technical detail would be helpful in understanding and evaluating the basis for the selection of steam reforming for treating SBW. Although steam reforming is not a new technology, using it to treat SBW is a novel application. If SBW is classified as a high-level waste, the characteristics of the final waste form resulting from treating SBW with steam reforming and the final disposition of the resulting solid would be of particular interest to the Board.

Thank you for helping make the Board's meeting in Idaho Falls a success.

Sincerely,

B. John Garrick
Chairman

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

FALL MEETING AGENDA
Tuesday, October 26, 2010

Washington Dulles Airport Marriott, Salons A/B/C
45020 Aviation Drive
Dulles, VA 20166
(T) (703)-471-9500 (F) (703)-661-8714

TOPIC FOR THE MEETING:
TECHNICAL EXPERIENCE GAINED DURING DEVELOPMENT OF THE YUCCA MOUNTAIN REPOSITORY PROGRAM

8:30 a.m. **Call to Order and Opening Statement**
B. John Garrick, Chairman
U.S. Nuclear Waste Technical Review Board

9:00 a.m. **PANEL 1: VIEW FROM WITHIN THE PROJECT**

Moderator:
Thure Cerling, NWTRB Member

Panelists:
- Russell Dyer, Former Project Manager and Chief Scientist, Yucca Mountain Project Office
- Tom Coleman, Former Subsurface Engineering Manager for USA RS
- Ted Feigenbaum, Former General Manager, Bechtel-SAIC Company, Ltd.
- Jean Younker, Former Deputy Assistant General Manager, Bechtel-SAIC Company, Ltd.

Each Panelist will be invited to make a presentation of approximately 15 minutes based on the following questions:

1. What tec hnical advances were made during development of the program that would be applicable in developing future programs for management of SNF and HLW in the U.S.?
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 SNF and HLW?
3. How did different managerial approaches and changes in management approach during the development of the program, influence the technical design, planned operations and logistics of the Yucca Mountain Program?

10:00 a.m. ***Questions and Discussion***

11:00 a.m. **BREAK**

11:15 a.m. **PANEL 2: VIEW FROM STATE AND LOCAL GOVERNMENTS**

Moderator:
George Hornberger, NWTRB Member
Panelists:
- Steve Frishman, Technical Consultant to the State of Nevada
- Abigail Johnson, Nuclear Waste Advisor, Eureka County, NV
- Irene Navis, Director of Emergency Management and Homeland Security, Clark County, NV
- Connie Simkins, Coordinator of Nuclear Oversight Program, Lincoln County, NV
- Joe Ziegler, Consultant on Nuclear Safety and Licensing, Nye County, NV

Each Panelist will be invited to make a presentation of approximately 10 minutes based on the following questions:

1. How has oversight performed by affected units of government in Nevada influenced technical decisions related to nuclear waste management and disposal? Please give examples.
2. What factors increased the effectiveness of the technical oversight? Conversely, what factors might have reduced the effectiveness of the oversight?
3. How does the performance of technical oversight affect the confidence of units of local government and the public in the validity of the technical process?

12:05 p.m. ***Questions and Discussion***

1:00 p.m. **LUNCH**

2:15 p.m. **PANEL 3: VIEW FROM OTHER COUNTRIES**

Moderator:
David Duquette, NWTRB Member

Panelists:
- Enrique Biurrun, DBE (Company for the Construction and Operation of Repositories for Radioactive Waste), Germany
- John Mathieson, Nuclear Decommissioning Authority, United Kingdom
- Gerald Ouzounian, Andra (National Agency for Radioactive Waste Management), France
- Olof Söderberg, Consultant to SKB (Swedish Nuclear Fuel and Waste Management Company), Sweden

Each Panelist will be invited to make a presentation of approximately 15 minutes based on the following questions:

1. As you were observing the Yucca Mountain program, what technical approaches seemed to be the most persuasive in terms of making a safety case? Which were the least persuasive? Which appeared to have a low probability of achieving their objective? Which seemed to be at odds with the prevailing international consensus?

2. If a new waste management and disposal effort were to be launched in the United States, what would be the three most important lessons your country has learned that should be taken into account?
4. Which aspects of the Yucca Mountain program and the repository program in your country indicate technical features or developments that should be avoided in developing a repository program in the U.S.?

3:15 p.m.	**Questions and Discussion**
4:15 p.m.	**Public Comments**
5:00 p.m.	**Adjourn Meeting**

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

COMMISSIONER

October 27, 2010

The Honorable Doc Hastings
1203 Longworth House Office Building
Washington, DC 20515-4704

Dear Congressman Hastings:

Thank you for your letter dated October 21, 2010. I share your view that the Nuclear Regulatory Commission's (NRC) work on the Yucca Mountain license application has been performed at the direction of Congress as required under the Nuclear Waste Policy Act. I firmly believe that Congress and the American public deserve to have the benefit of the information. In fact, I believe that the NRC is obligated to provide it.

With respect to the decision to halt all work on the Yucca Mountain license application, I have made my views available for the record in documents I released to the public earlier this month (see enclosed documents). In sum, I disagree with Chairman Jaczko's decision to transition to close out of the NRC's High-Level Waste Repository program, and I have voiced this disagreement to the Chairman, my other colleagues on the Commission, and the NRC staff. I endorse your view that the actions taken contravene the intent of the President's directive on openness and transparency.

Regarding your request for the current status of Volume III of the Yucca Mountain Safety Evaluation Report, it is my understanding that on July 15, 2010, Volume III was transmitted to the Director of the NRC's Office of Nuclear Material Safety and Safeguards for concurrence and authorization to publish. In light of the recent guidance to the NRC staff for the fiscal year 2011 Continuing Resolution, it is now my understanding that the NRC staff is no longer working on Volume III. Instead, the NRC staff will be developing a separate report to document its technical review activities completed to date. It is also my understanding that this report will not contain any specific regulatory findings made by the NRC staff with respect to the Yucca Mountain license application.

Concerning your request for a copy of the latest draft of Volume III and the associated data to compile the report, I have forwarded your request to the NRC's Office of Congressional Affairs.

I am available to respond to any further inquiries you may have on this matter.

Sincerely,

William C. Ostendorff

Enclosures:
as stated

October 27, 2010

The Honorable Jim Sensenbrenner
Ranking Member, Select Committee on
Energy Independence and Global Warming
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Sensenbrenner:

This letter is in response to your letter of October 13, 2010, in which you expressed concerns about reports regarding the U.S. Nuclear Regulatory Commission's (NRC's) review of the U.S. Department of Energy license application seeking to construct a geologic repository at Yucca Mountain, Nevada. You also requested answers to six questions. My responses to those questions are enclosed.

As detailed in my enclosed responses, I want to assure you that the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past NRC practice.

I appreciate your interest in our high-level waste program and will keep you informed of NRC activities in this regard, and would be happy to meet with you to discuss this matter further.

Sincerely,

/RA/

Gregory B. Jaczko

Enclosure:
Responses to Questions

Identical letters sent to:

The Honorable Jim Sensenbrenner
Ranking Member, Select Committee on
Energy Independence and Global Warming
United States House of Representatives
Washington, D.C. 20515

The Honorable Joe Barton
Ranking Member, Energy and Commerce
Committee
United States House of Representatives
Washington, D.C. 20515

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

The Honorable Doc Hastings
Ranking Member, Natural Resources Committee
United States House of Representatives
Washington, D.C. 20515

Responses to Questions

QUESTION 1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?

ANSWER.

Neither the text of the Fiscal Year (FY) 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the Fiscal Year 2011 Continuing Resolution provide the Commission with express direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. In the absence of an express direction, the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice. The Commission declined to revisit this decision in voting earlier this month.

As you know, in FY 2010, the NRC requested $56 million for its High-Level Waste (HLW) program, but Congress only appropriated $29 million. The NRC requested an appropriation of $10 million for the HLW program in FY 2011, or about a third of the FY 2010 appropriation. Both the Senate Appropriations Committee and the Energy and Water Development subcommittee of the House Appropriations Committee approved that sum for FY 2011.

Under these circumstances, the path that the NRC is following is consistent with NRC's obligation to spend funds prudently under a Continuing Resolution pending final budget action by the Congress. See Section 110 of Pub. L. 111-242, 124 Stat. 2607 (Sept. 30, 2010); OMB Circular No. A-11, §123.2 (2010).

QUESTION 2. What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?

ANSWER.

Pursuant to the guidance issued by the Executive Director of Operations and the Chief Financial Officer, staff is beginning an orderly closure of the program. No specific actions have yet been taken to terminate the program. Rather the first step of this process is to preserve the staff's work products, and complete and implement a detailed and comprehensive plan for this effort. The entire process is expected to take at least a year and include documenting the staff's review and other knowledge concerning the program by means such as comprehensive technical reports and videotaped interviews of technical staff.

QUESTION 3. How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?

ANSWER.

The staff is following established Commission policy to begin to close out the HLW program. These actions are separate from our hearing process and any decision the Commission may make to review the Atomic Safety and Licensing Board's (ASLB's) ruling and decide whether to uphold or reverse their decision concerning the formal status of the U.S. Department of Energy's (DOE's) application.

Enclosure

QUESTION 4. How will your decision impact future legal challenges to DOE's motion to withdraw?

ANSWER.

Currently the United States Court of Appeals for the District of Columbia has held related proceedings in abeyance pending NRC action. *In re* Aiken County, No. 10-1050 (and consolidated cases)(D.C. Cir.). I am not in a position to speculate on how this court or any future court will respond to NRC's actions.

QUESTION 5. How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?

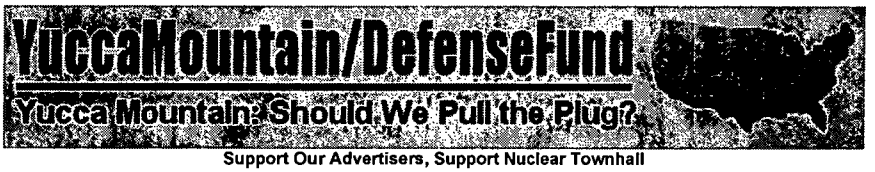
ANSWER.

The staff is beginning to transition to close out for the reasons outlined above. By thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be able to respond to direction from the Congress or the courts.

QUESTION 6. What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House.

ANSWER.

Consistent with my role as Chairman of an independent regulatory commission, members of my staff and I informed the White House and a select number of Members of the Congress, including NRC's authorizers and appropriators as well as Senator Reid, on a bipartisan basis, of the budgetary decision to begin to transition to close out of NRC's HLW activities. Neither I, nor anyone on my staff, had communication with the U.S. Department of Energy regarding this decision.



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NRC COMMISSIONER OSTENDORFF: RELEASE OF KEY DOCUMENTS HALTED BY REVIEW STOPPAGE »

EX-NRC CHAIRMAN KLEIN REBUFFS JACZKO YUCCA SHUT-DOWN ALIBI

October 29, 2010

Nuclear Townhall

In a stunning and remarkable open letter to journalists released late this afternoon, former U.S. Nuclear Regulatory Commission Chairman Dale E. Klein has rebutted a key assertion made by his successor – current Chairman Gregory Jaczko – with regard to Jaczko's decision earlier this month "to terminate the ongoing NRC work on the Yucca Mountain license application." Noting that Jaczko has repeatedly stated that 'the Commission approved this budgetary approach for fiscal year 2011," Klein, who was part of the budget deliberations, stated bluntly: "I do not agree with the Chairman's assertion that his actions are consistent with the Commission's FY2011 budget policy guidance."

The Klein letter adds more fuel to an escalating firestorm between the increasingly embattled Jaczko and Congress spurred by the Chairman's unilateral Yucca Mountain licensing application review stoppage. The action has resulted in a barrage of Congressional queries, the initiation of an investigation by Jaczko's own Inspector General, legal filings in Federal Court, charges of political gamesmanship favoring Jaczko mentor Senate Majority Leader Harry Reid and an extraordinary statement by a NRC staff member in an open forum with Commissioners that agency personnel feel "betrayed."

Klein added: "The FY 2011 budget was developed during the summer and fall of 2009 and ultimately approved by the Commission in January 2010. During that time, there were only three NRC Commissioners. My fellow Commissioner Kristine Svinicki has already publicly expressed her disagreement with the Chairman's actions. Let me make it clear, there was no intention by the Commission to approve, or even contemplate, a preemptive termination of the high-level waste (HLW) program. Our approach and guidance to agency staff was to sustain ongoing work while maintaining flexibility in the face of the Office of Management and Budget's directions concerning the HLW program."

Klein charged that "it is not appropriate for Chairman Jazcko to continue to rationalize his actions as being consistent with the Commission's FY 2011 budget guidance. Doing so implies that I and Commissioner Svinicki are complicit in authorizing his actions, and that is clearly not the case."

According to Klein, the continuing resolution budget guidance for the agency's Yucca Mountain review "should have been handled as a Commission policy matter, with the full participation of the Commission and, most certainly, in consultation with Congress.

"Lastly, having served as Chairman, I believe I have a reasonable understanding of the legal authority of the Chairman's office to address administrative matters such as budget issues. I would not consider the closeout of the HLW application technical review to be a simple reassignment of personnel or routine reallocation of resources. Rather, the actions taken are the implementation of a major national policy decision that has not been acted on by the Commission or authorized by Congress," Klein said.

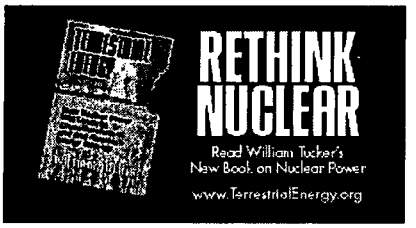
The full text of the Klein letter follows:

Open Letter to Journalists—

As a former Chairman of the Nuclear Regulatory Commission, I wish to address a particular point raised by the current Chairman, Gregory Jaczko, in the controversy surrounding his decision to terminate the ongoing NRC work on the Yucca Mountain license application. Chairman Jaczko has repeatedly stated that "the Commission approved this budgetary approach for fiscal year 2011". I served as a member of the Commission during the fiscal year (FY) 2011 budget deliberations and was intimately involved in establishing the budget policy referred to by Chairman Jaczko. I do not agree with the Chairman's assertion that his actions are consistent with the Commission's FY 2011 budget policy guidance.

The FY 2011 budget was developed during the summer and fall of 2009 and ultimately approved by the Commission in January 2010. During that time, there were only three NRC Commissioners. My fellow Commissioner Kristine Svinicki has already publicly expressed her disagreement with the Chairman's actions. Let me make it clear, there was no intention by the Commission to approve, or even contemplate, a preemptive termination of the high-level waste (HLW) program. Our approach and guidance to agency staff was to sustain ongoing work while maintaining flexibility in the face of the Office of Management and Budget's directions concerning the HLW program.

In December 2009, the HLW program was in flux. It was not known if the Department of Energy would request a withdrawal or suspension of the Yucca Mountain license application, the Blue Ribbon Commission on America's Nuclear Future had not been formed, and the Congress had not engaged on how affected agencies would address their obligations under the Nuclear Waste Policy Act. While I may have anticipated some of the unfolding events, I could not have predicted all that has clouded this contentious issue. Clearly the conditions



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- IAEA

and assumptions that the Commission relied upon in developing our FY 2011 budget approach changed over time, and a recalibration would have been appropriate.

Since the majority of current commissioners chose not to reconsider the budget guidance, the guidance which I helped to create remains in force. It is not appropriate for Chairman Jazcko to continue to rationalize his actions as being consistent with the Commission's FY 2011 budget guidance. Doing so implies that I and Commissioner Svinicki are complicit in authorizing his actions, and that is clearly not the case. Having served as NRC Chairman during several budget cycles, I believe that the continuing resolution budget guidance for the HLW program should have been handled as a Commission policy matter, with the full participation of the Commission and, most certainly, in consultation with Congress.

Lastly, having served as Chairman, I believe I have a reasonable understanding of the legal authority of the Chairman's office to address administrative matters such as budget issues. I would not consider the closeout of the HLW application technical review to be a simple reassignment of personnel or routine reallocation of resources. Rather, the actions taken are the implementation of a major national policy decision that has not been acted on by the Commission or authorized by Congress.
Dale E. Klein, PhD.
Former Chairman,
U.S. Nuclear Regulatory Commission

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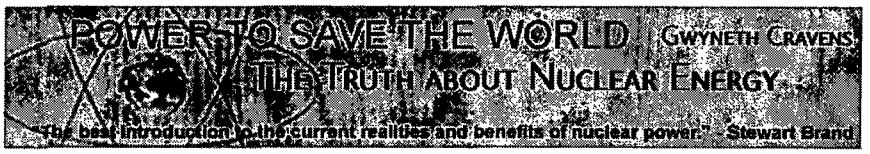
Tags: Gregory Jaczko, NRC, Yucca Mountain

This entry was posted on Friday, October 29th, 2010 at 5:26 pm and is filed under NRC, Yucca Mountain. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.



One Response to "EX-NRC CHAIRMAN KLEIN REBUFFS JACZKO YUCCA SHUT-DOWN ALIBI"

1. *Eric* Says:
October 30th, 2010 at 3:14 pm
Thank you Dr Klein for illuminating this as it is very helpful for those who are trying to understand what is going on at the NRC. You served the Commission with dignity and integrity.

I can't ever recall a Commissioner coming under such an attack. It appears that Jaczko is corrupt and should resign.

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- International
- Investment
- Loan Guarantees
- mid-term elections
- New Reactors
- Non-proliferation
- NRC
- Nuclear Energy Institute
- Nuclear Industry Reporting
- Nuclear Leaks
- Nuclear Renaissance
- Nuclear Summit
- Nuclear Townhall
- Nuclear Truths
- NuScale
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NUCLEAR WASTE FUND
RATEPAYER PAYMENTS BY STATE
THROUGH 9-30-10 (MILLIONS OF DOLLARS)

STATE	PAYMENTS 1 mill/kwh, One Time+Int	RETURN ON INVESTMENTS as of 9/30/10	TOTAL (PAY+RETURN)	DEBT*	FUND ASSETS** (TOTAL + DEBT)
AL	533.9	425.7	959.6	0.0	959.6
AR	358.2	285.6	643.8	175.6	819.4
AZ	266.3	212.4	478.7	0.0	478.7
CA	1,020.3	813.6	1,833.9	0.0	1,833.9
CO	0.2	0.2	0.4	0.0	0.4
CT	295.9	236.0	531.9	358.5	890.4
DE	46.6	37.2	83.8	0.0	83.8
FL	842.4	671.8	1,514.2	0.0	1,514.2
GA	685.5	546.6	1,232.1	0.0	1,232.1
IA	249.4	198.9	448.3	45.1	493.4
IL	1,880.1	1,499.2	3,379.3	972.6	4,351.9
IN	252.1	201.0	453.1	229.9	683.0
KS	133.3	106.3	239.6	0.0	239.6
KY	152.1	121.3	273.4	0.0	273.4
LA	324.2	258.5	582.7	0.0	582.7
MA	356.1	284.0	640.1	163.4	803.5
MD	390.6	311.5	702.1	0.0	702.1
ME	48.5	38.7	87.2	116.9	204.1
MI	314.2	250.6	564.8	198.2	763.0
MN	316.6	252.5	569.1	0.0	569.1
MO	250.7	199.9	450.6	5.1	455.7
MS	161.7	128.9	290.6	0.0	290.6
NC	1,538.0	1,226.4	2,764.4	0.0	2,764.4
ND	18.0	14.4	32.4	0.0	32.4
NE	190.0	151.5	341.5	0.0	341.5
NH	82.2	65.5	147.7	23.8	171.5
NJ	732.3	584.0	1,316.3	196.8	1,513.1
NM	77.4	61.7	139.1	0.0	139.1
NY	850.8	678.4	1,529.2	505.3	2,034.5
OH	461.9	368.3	830.2	32.6	862.8
OR	75.1	59.9	135.0	0.0	135.0
PA	1,378.3	1,099.1	2,477.4	66.6	2,544.0
RI	5.3	4.2	9.5	6.1	15.6
SC	689.4	549.7	1,239.1	0.0	1,239.1
SD	7.1	5.7	12.8	0.0	12.8
TN	580.1	462.6	1,042.7	0.0	1,042.7
TX	801.1	638.8	1,439.9	0.0	1,439.9
VA	698.9	557.3	1,256.2	0.0	1,256.2
VT	100.2	79.9	180.1	141.6	321.7
WA	170.6	136.0	306.6	0.0	306.6
WI	428.2	341.5	769.7	0.0	769.7
SUBTOTAL	17,763.8	14,165.3	31,929.1	3,238.1	35,167.2
FEDERAL	19.8	15.8	35.6	0.0	35.6
INDUSTRY	16.8	13.4	30.2	0.0	30.2
TOTAL	17,800.4	14,194.5	31,994.9	3,238.1	35,233.0

* Funds owed for fuel burned before 1983 but not yet paid by utilities (as allowed by DOE contract)

** before withdrawals for expenditures by DOE

Prepared by Ron Howe, Michigan Public Service Commission, 517-241-6021, hower@michigan.gov

State Nuclear Safety Inspector Office

November 2010 Monthly Report to the Legislature

Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 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 were no longer included in the report. Instead, this information was 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 November the general status of the ISFSI was normal with the fence project continuing. There were no spurious alarms due to environmental conditions.

There was no fire-related impairment but there was one security-related impairment in November. The impairment was due to the re-construction of the security fence near the east side of the Security and Operations Building. The impairment that started last month continued through the month and into the early part of December. The project was reviewed by the Nuclear Regulatory Commission but it did not require their prior approval. The re-aligning of the fence was to minimize the number of spurious and environmental alarms the ISFSI was experiencing.

There were 32 security events logged for the month. Twenty-four of the events documented transient environmental conditions which cleared shortly after their initiation. Seven of the events documented computer problems, six of which were due to operator error and one required the computer to be rebooted. The last event documented a planned and expected breach of the fence as part of the fence project. Security is required to log the event even though it was a planned activity.

There were 17 condition reports[1] (CR) for the month of November. The CRs are listed below.

- 1st CR: Documented an error found on one of the electrical prints. The error was corrected.
- 2nd CR: Involved a wrong revision number for an attachment to a program document. Upon further review it was determined that the program document was not needed and it was terminated.
- 3rd & 4th CRs: Were for security sensitive issues and are not available for public disclosure.

[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.

5th & 6th CRs: Were for tracking performance enhancement items from the practice drill and the annual emergency plan exercise.

7th CR: Documented the excavation without a Soil Scientist present. The excavation was halted until the Soil Scientist returned the next day.

8th CR: Involved missing pages from a procedure book. The pages were used during the drill and not replaced immediately after the drill.

9th CR: Documented an assumed error in the daily alarm testing. The alarms were retested. Upon further investigation it was determined that the initial testing was properly performed.

10th CR: As part of their rounds, Security identified a key in the control panel of the diesel generator. The key was left in the switch after changing the clock to Eastern Standard Time. The key was removed.

11th CR: Involved one part of the fence upgrade not being properly backfilled to specifications. The post hole was filled with asphalt instead of gravel.

12th CR: Documented a deficiency in testing when computers are replaced. The procedure was updated and clarified to ensure proper testing in the future.

13th CR: Addressed the footings of the fence posts not meeting backfill specifications. Some remediation was performed, but most of it was used as is with fill and some asphalt.

14th CR: Documented the first aid treatment to a security guard for a cut finger. Apparently, the security guard was not wearing protective gloves.

15th & 16th CR: Documented the new computer experiencing a new error code. In the first instance the computer automatically rebooted itself. In the second instance the computer had to be manually rebooted. Both issues were resolved by the vendor applying a software patch to fix the problem.

17th CR: Involved the radiation instruments in the emergency kits. The surveillance found in service beyond their calibration due date. New radiation instruments that were freshly calibrated were available but had not been swapped yet for the older radiation detectors in the emergency kits.

Other ISFSI Related Activities

On November 10th Maine Yankee submitted to the Nuclear Regulatory Commission revision 33 of their Spent Fuel Storage Installation Quality Assurance Program. The changes do not diminish the commitments in the program as they are editorial in nature, such as correcting punctuation, updating the revision number, changing bullets to lettered subparagraphs, and deleting a reference to Containment.

On November 21st a former contractor was observed taking pictures from Ferry Road. The local law enforcement agency was notified. They intercepted and counseled the individual. Since the contractor was not on Maine Yankee property, no notifications to the Nuclear Regulatory Commission's Operations Center were made.

On November 29th Maine Yankee submitted a letter to the Nuclear Regulatory Commission (NRC) requesting an exemption from the new NRC security regulations pertaining to operating reactors. Maine Yankee's intent is to maintain the current regulatory requirements until the new rulemaking revising the security requirements for ISFSIs is implemented. The exemption request contains security-related sensitive information that is being withheld from public disclosure.

Environmental

On November 2nd the State received the third quarter results from the field replacement of the thermoluminescent dosimeters[2] (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 F and averaged 33.7 milliRoentgens[3] (mR) due to their proximity to the storage casks. The moderately high group stations E, J, L, and M averaged 29.4 mR. The remaining stations, A, B, D, H, and I, averaged 27.0 mR. The TLDs at station C were missing, as noted in last month's report, as part of a security measure to enhance visibility. The tree limb that the TLDs were on was cut and disposed of. New TLDs were placed on the tree trunk for the fourth quarter.

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 29.9 mR.

The Bailey Cove TLDs averaged 27.9 mR and ranged from 25 to 30 mR, which is comparable to the normally expected background radiation levels. As observed with the ISFSI TLDs, the Bailey Cove TLDs also had some higher values with the lower values due to their proximity to the water's edge.

For 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 F, G, and K.

Maine Yankee Decommissioning

The preliminary draft of the Confirmatory Summary Report detailing the State's involvement and independent findings is about 25% completed.

Groundwater Monitoring Program

On November 4th Maine Yankee provided the State with a list of quality control issues raised by their independent contractor's validation of the June groundwater data and explanations for the results obtained. Subsequent internal reviews were performed by the Department of Environmental Protection and the Health and Environmental Testing Laboratory on the list provided. Maine Yankee had notified the State in July that Maine Yankee's laboratory vendor, AREVA, was closing and dismantling its radioactive laboratory operations in Westborough, Massachusetts. AREVA, however, assured Maine Yankee that they would complete the analyses as per their contract. Nonetheless, the hastiness of the closing compromised the data quality.

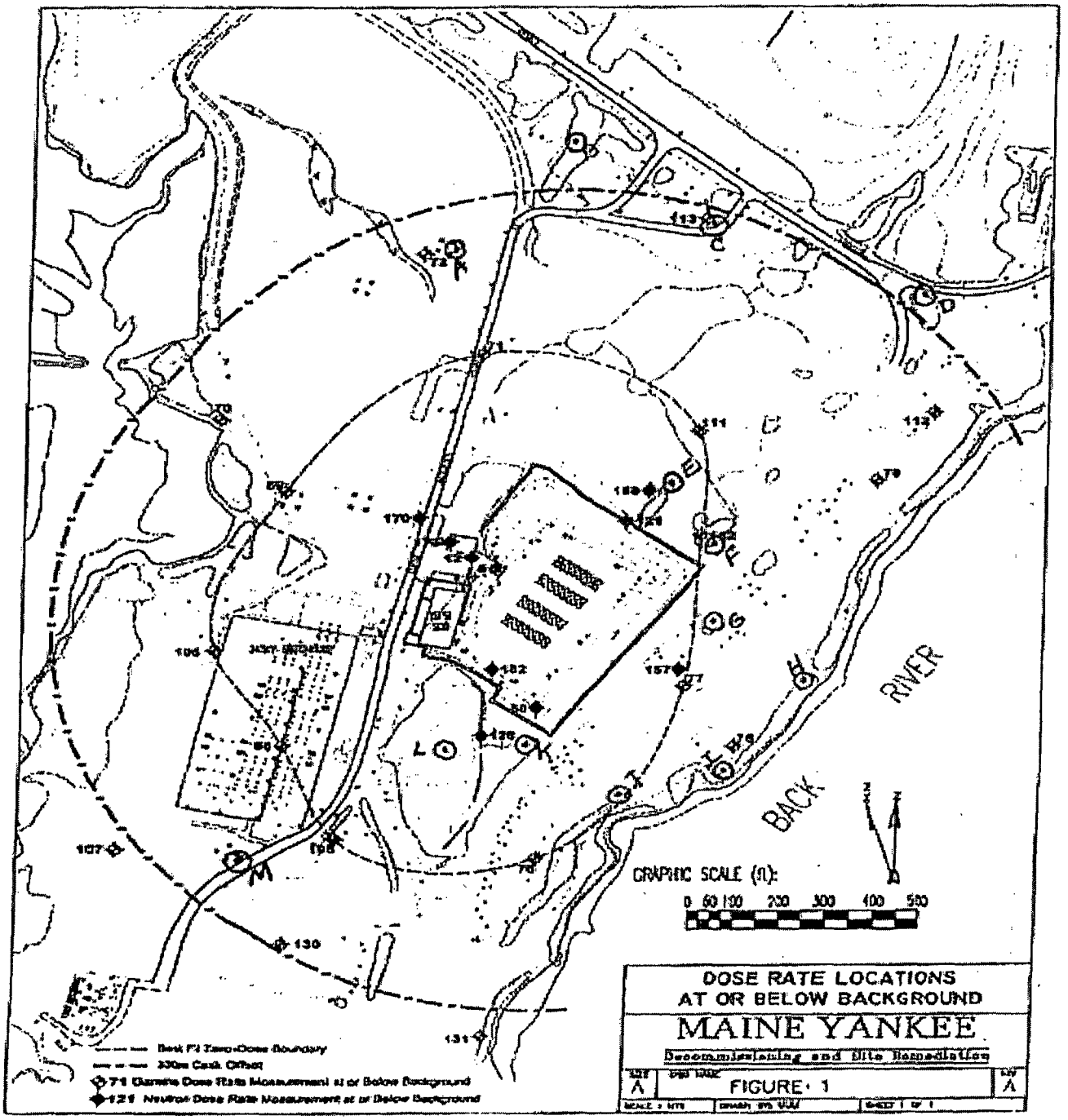
On November 16th Maine Yankee hosted a conference call with the State to discuss the issues raised by the laboratory vendor's inadequate performance. Maine Yankee committed to properly completing the groundwater sampling and analysis with another laboratory contractor. The State's Radiation Control Program,

[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 Department of Environmental Protection and the Health and Environmental Testing Laboratory participated in the conference call along with Maine Yankee and their supporting contractors, Ransom Environmental Consultants Inc. and Black Diamond Consultants.

Figure 1



Other Newsworthy Items

1. On November 1st Secretary of Energy Chu issued his determination on the adequacy of the Nuclear Waste Fund fee as per the Nuclear Waste Policy Act. Secretary Chu concluded that there was no reasonable justification to increase or decrease the fee. Therefore, there will be no proposal to Congress to adjust the fee and the fee will remain the same. Secretary Chu endorsed the determination provided by the Department of Energy's (DOE) Office of Standard Contract Management. Copies of the Secretary's adequacy statement and DOE's determination are attached.

2. On November 1st Nuclear Regulatory Commissioner Svinicki responded to the Nuclear Regulatory Commission Chairman's October 27th response to the House of Representative Sensenbrenner's October 13th letter. Commissioner Svinicki disagrees with the Chairman's position that based on the FY 2011 budget request the Chairman commenced the orderly closure of the Yucca Mountain Project. Commissioner Svinicki points to the FY 2011 budget request language stipulating that closure would commence "upon the withdrawal or suspension of the licensing review", which has not occurred. A copy of her letter is attached.

3. On November 1st the Nuclear Regulatory Commission (NRC) staff filed with the NRC Atomic Safety and Licensing Board stating that it had not identified any additional witnesses.

4. On November 1st White Pine County, Nevada filed with the Nuclear Regulatory Commission's (NRC) Atomic and Safety Licensing Board (ASLB) that it had no additional party or other witnesses to the NRC's review of the Yucca Mountain license application.

5. On November 1st Senator Inhofe from Oklahoma sent a letter to all five Nuclear Regulatory Commissioners requesting they respond to questions relative to the Commissioners voting on the Atomic Safety and Licensing Board's ruling to deny the Department of Energy's motion to withdraw their license application on Yucca Mountain. Since all the letters are virtually the same, a copy of the letter to Commissioner Magwood is attached.

6. On November 2nd the Transportation and Storage Subcommittee of the Blue Ribbon Commission on America's Nuclear Future held a meeting in Chicago. The meeting was segregated into three panels. The first panel reviewed the National Academies' report on spent fuel transportation, its findings, status of its recommendations, and what the future holds for shutdown plants. The second panel dealt with specific facility siting aspects and other process issues relative to one or more interim storage facilities. The third panel discussed what steps and timelines would be necessary to plan and implement a large scale spent fuel transportation campaign in the next three to five years.

7. On November 4th Nuclear Regulatory Commissioners Ostendorff and Svinicki separately responded to Senator Inhofe's November 1st letter on when they voted on the Yucca Mountain ruling. A copy of Commissioner Svinicki's response is attached.

8. On November 4th the Disposal Subcommittee of the Blue Ribbon Commission on America's Future held a meeting to discuss the lessons learned from past site evaluation processes. Topics included the scope of scientific work and costs associated with the Waste Isolation Pilot Plant in Carlsbad, New Mexico, and the Yucca Mountain Project in Nevada.

9. On November 5th Chairman Jaczko of the Nuclear Regulatory Commission (NRC) responded to Senator Inhofe's November 1st letter stating that he did vote twice on the NRC's Atomic Safety and Licensing Board's ruling denying the Department of Energy's motion to withdraw its Yucca Mountain license application. However, he did not inform the Senator how he voted. Commissioner

Magwood also responded on the 5th as to when he voted. A copy of the Chairman's letter is attached.

10. On November 10th the Nuclear Waste Strategy Coalition held a conference call to update its members on the status of the withdrawal of the Yucca Mountain license application pending before the Nuclear Regulatory Commission and the U.S. Court of Appeals for the District of Columbia Circuit, the status of the litigation of the Nuclear Waste Fund fees with oral arguments set for December 6th, an update on the hearing activities of the Blue Ribbon Commission Committee and Subcommittees, and pending discussions on FY 2011 Appropriations and Continuing Resolution until December 3rd. 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 November 15-16th the Blue Ribbon Commission on America's Nuclear Future held a two day meeting. The first day focused on overviews from Japan's, France's, Canada's and Russia's waste disposal policies as well as an overview managing spent nuclear fuel from the RAND Corporation, American Nuclear Society, and Professor Stewart from New York's University School of Law. The second day was devoted to the Green Ribbon Commission, Dr. Jenkins-Smith from the University of Oklahoma and lessons learned from U.S. and international repository programs.

12. On November 15th Representative Mike Simpson from Idaho introduced a House Resolution condemning the Nuclear Regulatory Commission's (NRC) Chairman for unilaterally ceasing the NRC's review of the Yucca Mountain license application and calling on the NRC to resume their licensing activities on the geologic repository. A copy of the House resolution is attached.

13. On November 16th three members of the U.S. House of Representatives sent a letter to the White House's Acting Director of the Office of Management and Budget requesting an explanation of the legal budget authority that the Chairman of the Nuclear Regulatory Commission has to cease the review of the Yucca Mountain Project. In addition, the Representatives requested a list of other federal agencies operating under similar guidance from their FY 2011 budget requests. A copy of their letter is attached.

14. On November 17th the State Inspector participated in a national webinar on the Department of Energy's real time tracking system demonstration of high visibility radioactive shipments through radio frequency identification and satellite monitoring.

15. On November 18th the Attorneys representing Nevada sent a letter to the Chair of the Nuclear Regulatory Commission's Atomic Safety and Licensing Board inquiring on the status of Nevada's eleven legal issues pending before the Board. On behalf of Nevada, the letter requested the Board to issue a schedule for deciding these legal issues. A copy of their letter is attached.

16. On November 19th three Representatives from Washington, California and New Jersey, sent a letter to the Nuclear Regulatory Commission Chairman requesting to release the Commission's decision on the Department of Energy's motion to withdraw its Yucca Mountain license application. A copy of their letter is attached.

17. On November 22nd the two Co-Chairs for the Blue Ribbon Commission on America's Nuclear Future sent a letter to the Department of Energy requesting specific cost and financing information on the nation's High-Level Waste Program. A copy of their request is attached.

18. On November 23rd the Nuclear Regulatory Commission's Atomic safety and Licensing Board ordered that Nevada's November 18th letter will be accepted as a motion before the Board and notified the other parties that they have ten days to respond to Nevada's motion.

19. On November 24th Aiken County, South Carolina, filed with the U.S. Court of Appeals for the District of Columbia Circuit their status report as mandated by the Court's July 28th Order directing the parties to file status reports every 30 days.

20. On November 29th the Nuclear Regulatory Commission (NRC) staff notified the NRC's Atomic Safety and Licensing Board that it will not be issuing its Safety Evaluation Report Volume 3 on the Yucca Mountain Project this month and that a revised schedule for its publication is uncertain at this time.

21. On November 29th Aiken County, South Carolina, the states of Washington and South Carolina, and the three business leaders near the Hanford Reservation in Washington filed a status report with the U.S. Court of Appeals for the District of Columbia Circuit requesting the Court to grant their motion to lift the Court ordered stay that was issued on the pending Nuclear Regulatory Commission's decision on the Atomic Safety and Licensing Board's ruling to deny the Department of Energy's motion to withdraw its license application on Yucca Mountain. The petitioners base their contention on the Commission's inactivity on this issue since July and that the Court's stay was predicated on the Commission's imminent resolution, which is still outstanding.

The Secretary of Energy
Washington, D.C. 20585

Secretarial Determination of the Adequacy of the Nuclear Waste Fund Fee

The Nuclear Waste Policy Act (NWPA) establishes a Nuclear Waste Fund to be used to pay for the disposition of commercial spent nuclear fuel and high-level radioactive waste. Section 302(a)(2) of the NWPA establishes a fee of 1 mill (1/10-cent) per kilowatt-hour of electricity generated and sold that must be paid by nuclear utilities and deposited in the Fund. The NWPA also requires the Secretary to review the adequacy of this fee annually and, upon a determination that either insufficient or excess funds are being collected, to propose an adjustment to the fee to ensure that the full costs of the Federal Government's disposal program will be fully recovered from generators and owners of high-level radioactive waste or spent nuclear fuel. The Secretary must transmit any proposed fee adjustment to Congress for a review period of 90 days of continuous session, after which time the adjustment becomes effective unless contrary legislation is enacted into law.

I adopt and approve the attached annual determination of the Director, Office of Standard Contract Management, that there is no reasonable basis at this time to conclude that either excess or insufficient funds are being collected and thus will not propose an adjustment to the fee to Congress; the fee will, therefore, remain at the amount specified in the Nuclear Waste Policy Act pending the next annual review.

Steven Chu

Steven Chu

OCT - 1 2010

Date

Attachment

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Department of Energy
Washington, DC 20585

October 18, 2010

MEMORANDUM FOR SCOTT BLAKE HARRIS
GENERAL COUNSEL

FROM: DAVID K. ZABRANSKY, DIRECTOR
OFFICE OF STANDARD CONTRACT MANAGEMENT

SUBJECT: Annual Determination of the Adequacy of the Nuclear Waste Fund Fee

The Nuclear Waste Policy Act (NWPA) establishes a Nuclear Waste Fund to be used to pay for the disposition of commercial spent nuclear fuel (SNF) and high-level radioactive waste (HLW). Section 302(a)(2) of the NWPA establishes a fee of 1 mill (1/10-cent) per kilowatt-hour of electricity generated and sold. That fee must be paid by nuclear utilities and deposited in the Fund. The NWPA also requires the Secretary to review the adequacy of this fee annually and, upon a determination that either insufficient or excess funds are being collected, to propose an adjustment to the fee to ensure that the full costs of the Federal Government's disposal program will be fully recovered from generators and owners of HLW or SNF. The Secretary must transmit any proposed fee adjustment to Congress for a review period of 90 days of continuous session, after which time the adjustment becomes effective unless contrary legislation is enacted into law. Since the enactment of the NWPA in January 1983, the Secretary has never proposed a fee adjustment. The most recent assessment of the adequacy of the fee, completed in 2009, concluded that the fee was adequate based on the most recent life cycle cost estimate of the Yucca Mountain repository of $97 billion in constant 2007 dollars.

The Office of Standard Contract Management has conducted an annual review of the adequacy of the Nuclear Waste Fund fee. A copy of this "Annual Review of the Adequacy of the Nuclear Waste Fund Fee" is attached. This annual review concludes that there is no reasonable evidentiary basis to conclude that the current fee is generating either insufficient or excess funds to cover the costs of DOE's obligation to manage and dispose of SNF and HLW. Accordingly, I have determined that there is no basis to propose an adjustment to the fee to Congress and, therefore, the fee should remain at the amount specified in the NWPA.

Attachment

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Annual Review of the Adequacy of the Nuclear Waste Fund Fee

INTRODUCTION: The Nuclear Waste Policy Act (NWPA) establishes a Nuclear Waste Fund to be used to pay for the disposition of commercial spent nuclear fuel (SNF) and high-level radioactive waste (HLW). Section 302(a)(2) of the NWPA establishes a fee of 1 mill (1/10-cent) per kilowatt-hour of electricity generated and sold that must be paid by nuclear utilities and deposited in the Fund. The NWPA also requires the Secretary to review the adequacy of this fee annually and, upon a determination that either insufficient or excess funds are being collected, to propose an adjustment to the fee to ensure that the full costs of the Federal Government's disposal program will be fully recovered from generators and owners of HLW or SNF. The Secretary must transmit any proposed fee adjustment to Congress for a review period of 90 days of continuous session, after which time the adjustment becomes effective unless contrary legislation is enacted into law. Since the enactment of the NWPA in January 1983, the Secretary has never proposed a fee adjustment. The most recent assessment of the adequacy of the fee, completed in 2009, concluded that the fee was adequate based on the most recent life cycle cost estimate of the Yucca Mountain repository of $97 billion in constant 2007 dollars.

This review concludes that there is no reasonable evidentiary basis to conclude that the current fee is generating either insufficient or excess funds. In such circumstances, the statutory framework and legislative intent support maintenance of the fee at the amount specified in the NWPA.

BACKGROUND: Section 111(b)(4) of the NWPA states that one of the purposes of the NWPA is "to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of [high-level radioactive] waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel." The legislative history of the NWPA confirms that Congress intended those who benefit from electricity supplied through nuclear power to pay for the disposal of nuclear waste and spent fuel created during the generation of that electricity.[1]

Section 302(a)(1) of the NWPA authorizes the Secretary of Energy to enter into contracts with generators or owners of HLW or SNF. Section 302(a)(5) requires that these contracts contain a provision under which the Secretary agrees to dispose of SNF and HLW in return for payment of the fees established by section 302. Thus, payment of the fee is the consideration for the Secretary's contractual obligations related to the disposal of HLW and SNF. Section 302(a)(2) sets the fee at 1.0 mill per kilowatt-hour of electricity generated by a civilian nuclear power

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[1] *Commonwealth Edison Co. v. U.S. Dept. of Energy*, 877 F.2d 1042, 1047 (D.C. Cir. 1989) ("Congress, in passing the Nuclear Waste Policy Act, expressed its intention that 'the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel.'") (citing NWPA, sec. 111(a)(4)); Congressional Record – Senate at S 15655 (December 20, 1982) ("The bill includes several new or modified concepts from the bill passed by the Senate in the last Congress. One of the most noteworthy of those is the proposal for an assured full-cost recovery by the Federal Government from nuclear power-supplied ratepayers for the nuclear waste programs included in the bill. By establishing a 1 mill-per-kilowatt-hour users fee on nuclear generated electricity, this bill for the first time would provide a direct financial linkage between the beneficiaries of nuclear power and the cost for interim management and ultimate disposal for nuclear wastes.").

reactor and sold on or after the date 90 days after January 7, 1983. This fee results in the deposit of approximately $750 million of receipts annually into the Waste Fund. The Waste Fund's balance accrues annual interest of approximately $1 billion, producing total annual income into the Waste Fund of approximately $1.750 billion. The current value of the Waste Fund is approximately $24 billion.

Section 302(a)(4) of the NWPA provides for the Secretary annually to review the amount of the fee to "evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d)" of Section 302. Subsection (d) defines such costs in terms of expenditures from the Waste Fund "for purposes of radioactive waste disposal activities under Titles I and II" of the NWPA. Section 302(a)(4) further provides that, if the Secretary "determines that either insufficient or excess revenues are being collected," the Secretary "shall propose an adjustment to the fee to insure full cost recovery." The NWPA provides Congress with 90 days in which to act before the adjustment can take effect.[2]

The Secretary of Energy has determined that a Yucca Mountain Repository is not a workable option for permanent disposal of SNF and HLW. Consistent with that determination, on March 11, 2009, Secretary Chu announced that "the [Fiscal Year (FY) 2010] Budget begins to eliminate funding for Yucca Mountain as a repository for our nation's nuclear waste."[3] The Secretary stated that DOE "will begin a thoughtful dialogue on a better solution for our nuclear waste storage needs."[4] In its May 2009 budget request for FY 2010, DOE requested no funding for development of a Yucca Mountain repository.[5] Congress approved DOE's budget request in October 2009.[6]

In its February 2010 budget request for FY 2011, DOE stated that it "has been evaluating a range of options for bringing the [Yucca Mountain] project to an orderly close. In FY 2010, the Department of Energy will withdraw from consideration by the Nuclear Regulatory Commission the license application for construction of a geologic repository at Yucca Mountain, Nevada, in accordance with applicable regulatory requirements."[7] The Administration's FY 2011 Budget similarly stated that "[i]n 2010 the Department [of Energy] will discontinue its application to the

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2 The Eleventh Circuit in *Alabama Power* struck the "unless" clause from the fee adjustment statutory provision as violative of the Supreme Court's decision in *INS v. Chadha*, 462 U.S. 919 (1983). *Alabama Power Co. v. U.S. Dept. of Energy*, 307 F.3d 1300, 1308 (2002). As a result, the statute that remains reads "[t]he adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal [to Congress]," while the clause "unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment . . ." was invalidated.

3 Statement of Steven Chu, Secretary of Energy, Before the Comm. on the Budget, United States Senate. at 3, *available at* http://congressional.energy.gov/documents/3-11-09_Final_Testimony_(Chu).pdf.

4 *Id.*

5 DOE, FY 2010 Cong. Budget Request, Budget Highlights. at 9, *available at* http://www.cfo.doe.gov/budget/10budget/Content/Highlights/FY2010Highlights.pdf. In addition, the request included minimal funding to continue participation in the NRC license application process for Yucca Mountain. *Id.*

6 Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85, 123 Stat. 2845, 2864-65 (2009); Energy and Water Development and Related Agencies Appropriations Act, 2010, Conference Report, H.R. Rep. No. 111-278 at 20-21 (2009), reprinted in 2009 U.S.C.C.A.N. 1003.

7 DOE, FY 2011 Cong. Budget Request, Budget Highlights. at 44, *available at* http://www.mbe.doe.gov/budget/11budget/Content/FY2011Highlights.pdf.

Nuclear Regulatory Commission (NRC) for a license to construct a high-level waste geologic repository at Yucca Mountain, Nevada."[8] It further stated that "all funding for development of the [Yucca Mountain] facility will be eliminated" for FY 2011.[9] Consistent with those determinations, on March 3, 2010, the Department filed a motion with the NRC to withdraw the license application for Yucca Mountain.[10] An NRC Board denied that motion on June 29, 2010, but the next day the NRC itself invited briefing as to whether it should review and reverse or affirm that determination.[11] As of this writing, the matter remains pending before the NRC.[12]

Although, as noted above, the Secretary has determined that a geologic repository at Yucca Mountain is not a workable option, the Secretary has repeatedly affirmed the Department's commitment to meeting its obligation to manage and dispose of the nation's SNF and HLW.[13] To explore options to meet this commitment, the Secretary, acting at the direction of the President, has established the Blue Ribbon Commission on America's Nuclear Future (BRC).[14] The BRC is directed by its charter to consider, among other things, (1) "[o]ptions for safe storage of used nuclear fuel while final disposition pathways are selected and deployed," (2) "fuel cycle technologies and R&D programs," and (3) "[o]ptions for permanent disposal of used fuel and/or high-level nuclear waste, including deep geological disposal."[15] Congress has provided $5 million to fund the BRC so that it may consider "alternatives" for disposal of SNF and HLW.[16] The BRC is required to issue a draft report by mid-2011 and a final report by early 2012.[17] The BRC's forthcoming recommendations will inform the Department's policies toward management and disposal of SNF and HLW.

DISCUSSION:

The Framework Established by the NWPA and the Standard Contracts

As explained above, Section 302(a)(1) of the NWPA provides that DOE's disposal contracts with generators or owners of HLW or SNF must contain a provision that requires the payment of a fee. Section 302(a)(5) provides that payment of the fee is the consideration for the Secretary's

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8 Office of Management and Budget, Terminations, Reductions, and Savings, Budget of the U.S. Government, FY 2011, at 62, *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/trs.pdf.

9 *Id.*

10 DOE's Motion to Withdraw, In the Matter of U.S. Dep't of Energy, Docket No. 63-001-HLW, ASLBP No. 09-892-HLW-CAB04.

11 In the Matter of U.S. Dep't of Energy, Docket No. 63-001-HLW, ASLBP No. 09-892-HLW.

12 *Id.*

13 See, e.g., DOE, Secretary Chu Announces Blue Ribbon Commission on America's Nuclear Future (Jan. 29, 2010), *available at* http://www.energy.gov/news/8584.htm ("The Administration is committed to promoting nuclear power in the United States and developing a safe, long-term solution for the management of used nuclear fuel and nuclear waste."); DOE's Motion to Withdraw at 1, In the Matter of U.S. Dep't of Energy, Docket No. 63-001-HLW, ASLBP No. 09-892-HLW-CAB04 ("DOE reaffirms its obligation to take possession and dispose of the nation's spent nuclear fuel and high-level nuclear waste ... .").

14 DOE, Secretary Chu Announces Blue Ribbon Commission on America's Nuclear Future (Jan. 29, 2010), *available at* http://www.energy.gov/news/8584.htm.

15 Charter, Blue Ribbon Commission on America's Nuclear Future (filed March 1, 2010), *available at* http://www.brc.gov/pdfFiles/BRC_Charter.pdf ("BRC Charter").

16 Energy and Water Development and Related Agencies Appropriations Act, 2010 Pub. L. No. 111-85, 123 Stat. 2845, 2864-65 (Oct. 2009).

17 BRC Charter, ¶ 4.

obligation under the contract to take and dispose of HLW and SNF. Nothing in the NWPA, or in the contracts entered into pursuant to Section 302 (standard contracts),[18] ties either of these obligations to progress on the Yucca Mountain repository or the use of the Yucca Mountain repository for the disposal of HLW or SNF. On the contrary, consistent with the statute, the standard contracts provide that "DOE shall accept title to all SNF and/or HLW, of domestic origin, generated by the civilian nuclear power reactor(s) specified in appendix A, provide subsequent transportation for such material to the DOE facility, and dispose of such material in accordance with the terms of this contract" without specifying a particular disposal site or method.[19] Thus, the statutory and contractual language is clear that the obligations to collect and to pay the waste fee are ongoing and tied to DOE's obligation to take and dispose of SNF and HLW, but not to the Yucca Mountain project. Those statutory and contractual obligations remain in place today.

Under the statutory and contractual scheme, payment of the fees continues to provide the consideration for DOE's performance of its obligations to dispose of these materials.[20] DOE, moreover, has clearly stated that termination of the Yucca Mountain project does not affect its commitment to fulfill its contractual obligations to take and dispose of HLW and SNF.[21] Accordingly, the fact that DOE will not pursue the Yucca Mountain repository does not provide a basis to stop the collection and payment of the consideration for acceptance and disposal of HLW and SNF.

DOE's conclusion that its obligation to dispose of these materials – and thus the need to collect a fee to recover the costs of such disposal – is independent of the status of the Yucca Mountain repository, or any other repository, has been supported by the courts. As explained by the D.C. Circuit in *Indiana Michigan*:

> DOE's duty ... to dispose of the SNF is conditioned on the payment of fees by the owner ... *Nowhere, however, does the statute indicate that the obligation ... is somehow tied to the commencement of repository operations* ... The only limitation placed on the Secretary's duties ... is that that duty is "in return for the payment of fees established by this section."[22]

Similarly, courts have made clear that the waste fee is intended to defray the costs of a wide set of activities relating to permanent disposal. In *State of Nev. ex rel. Loux,* the court concluded that the NWPA requires the Waste Fund to cover the costs of a broad array of activities that relate to the ultimate disposal of waste, including pre-site characterization activities conducted

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18 10 C.F.R. § 961.11 (text of the standard contract).

19 *Id.*, Art. IV.B.1.

20 NWPA, sec. 302(a)(5)("Contracts entered into under this section shall provide that ... (B) in return for the payment of fees ... the Secretary ... will dispose of the [HLW] or [SNF] ... .").

21 *See supra* note 13.

22 *Indiana Michigan Power Co. v. Dept. of Energy*, 88 F.3d 1272, 1276 (D. C. Cir. 1996) (quoting NWPA, sec. 302(a)(5)(B)) (emphasis added).

by a state in which a repository may potentially be sited.[23] Significantly, moreover, in *Alabama Power*, which was decided after the Joint Resolution of Congress approving the Yucca Mountain site (i.e., the Yucca Mountain Development Act) became law, the court did not limit Section 302(d) to activities associated with Yucca Mountain; instead, the court noted that Section 302(d) permits expenditures for activities that "entail some sort of advancement or step toward permanent disposal, or else an incidental cost of maintaining a repository."[24] These cases are consistent with Congress's intent that the Waste Fund be used to pay the costs of DOE's entire disposal program, rather than only the costs of a particular repository.[25]

Basis for Any Adjustment to the Fee

The remaining question for decision is whether there is, at this time, a basis for the Secretary to propose to Congress an adjustment of the fee. As stated above, the NWPA prescribes that the fee "shall be equal to 1.0 mil" per kilowatt-hour of electricity generated and sold by nuclear utilities. The fee can be altered under the NWPA only through the adjustment provision of Section 302(a)(4), which requires the Secretary to propose an adjustment to the fee "[i]n the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d)" and further provides Congress an opportunity to either allow the proposal to become law or enact contrary legislation. In other words, the NWPA requires the fee to remain at the statutorily-prescribed rate of 1.0 mill unless and until the Secretary determines an adjustment is necessary because excess or insufficient revenues are being collected. If the Secretary makes such a determination, the Secretary must report that determination to Congress, and wait 90 days to see whether Congress acts to disturb that judgment.[26]

The NWPA does not prescribe a methodology for how the Secretary must carry out the fee adequacy review provision of Section 302(a)(4). Rather, the NWPA gives the Secretary discretion in how he administers that provision each year.[27] Over the years, the Secretary has

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[23] *State of Nev. ex rel. Loux v. Herrington*, 777 F.2d 529, 532 (9th Cir. 1985). The issue in that case was whether Nevada was entitled to access the Waste Fund to pay for its pre-site characterization monitoring and testing activities at Yucca Mountain. Despite the fact that the NWPA – in sections 116(c)(1)(A) and 117(c)(8) – expressly authorizes funding of only *post*-site characterization monitoring and testing activities, the court liberally construed other NWPA provisions as also authorizing funding of *pre*-site characterization monitoring and testing activities. *Id.* at 532-35. The court indicated that a liberal construction of the NWPA's funding provisions is necessary to effectuate the statutory purpose of ensuring that generators and owners of HLW and SNF bear the full costs of the disposal of their HLW and SNF. *Id.* at 532. *See also Indiana Michigan*, 88 F.3d at 1275 (indicating that Congress intended Section 302(d) of the NWPA, which governs Waste Fund expenditures, to be interpreted more liberally than other sections of the NWPA).

[24] *Alabama Power*, 307 F.3d at 1313.

[25] *See* S. Rep. No. 100-517 at 1-2 (1988) ("The Nuclear Waste Policy Act of 1982 (NWPA) establishes a national policy and *program for safely storing, transporting, and disposing of spent nuclear fuel and high-level radioactive waste*. ... The NWPA also establishes a nuclear waste fund, to be composed of payments made by generators of spent fuel and high-level waste, from which the costs of *the program* are paid.") (emphases added).

[26] NWPA, sec. 302(a)(4); *Alabama Power*, 307 F.3d at 1308.

[27] *Alabama Power*, 307 F.3d at 1308. That court further observed that any challenge to DOE's decision would face an "insurmountable burden of proof" and that "[g]iven the nebulous calculations that must be made in order to assess the costs of waste storage that will be incurred in the distant future, it is not surprising that the statutory fee has never been challenged by the utilities." *Id.* at 1309.

used this flexibility to implement varying approaches to evaluate the adequacy of the waste fee.[28] These approaches reflected the evolving nature of the disposal program, including changes in the direction of the program and changes in expectations concerning what activities would be undertaken in the future, what costs would be incurred, and what future market conditions would be. None of these annual evaluations has ever led to a conclusion that the fee of 1.0 mill per kilowatt-hour of electricity was either insufficient or excessive such that an adjustment was necessary to ensure full cost recovery. It has, thus, remained unchanged since it was first established.

In this instance, we are aware of no evidence that would provide a reasoned and sound basis for determining that excess or insufficient revenues are being collected for the costs for which DOE is responsible under the NWPA's statutory scheme (and under its contractual obligations entered into pursuant to that scheme). At the direction of the President and with funding provided by Congress, the Secretary has established the Blue Ribbon Commission to analyze alternatives and to provide recommendations for disposal of these materials. Future decisions as to these matters will be informed by the recommendations of the BRC. At this time, however, the BRC has not reported, and thus no action has been or could be taken in light of its recommendations. Accordingly, there is no basis to say that the Department's means of meeting its statutory and regulatory obligations will require more or less money than would be collected through continued assessment of the fee at the level it has been set at for several decades. In such a situation, the relevant language of the NWPA requires (or, at the least, permits) the amount of the waste fee to remain at the amount set by the NWPA itself. In particular, because the Secretary cannot make an affirmative "determin[ation]" that "insufficient or excess revenues are being collected," the Secretary may decide not to propose a change to the fee. Such an approach is consistent with DOE's past annual reviews, which have stated that DOE's policy is to propose a change to the fee only "when there is a compelling case for the change."[29]

Additionally, to the extent that there is information bearing on the total cost of alternative means of disposing of the materials at issue, that information supports retaining the fee at its current level. Over more than two decades, both before and after Yucca Mountain was designated as the site for which an application should be filed, the Secretary's fee reviews have uniformly determined that the fee should remain at the present rate. Before Yucca Mountain was

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[28] For example, in the 1987 assessment, the number of cases (involving different host rock and locations among two repositories) was reduced from 10 to 5, as a result of the President's decision in May 1986 to approve only 3 candidate sites for characterization. In 1989, the number of cases was reduced to 1, as a result of the Nuclear Waste Policy Amendments Act's designation of Yucca Mountain as the only site to be characterized for the first repository. Program changes in other years were similarly reflected in fee adequacy assessments for those years. Notably, all fee adequacy assessments since 1995 have assumed that the NWPA's 70,000 MTHM emplacement limit would be repealed by Congress so that only one repository would be constructed to receive all the SNF produced by existing reactors. *See* Bechtel SAIC Company, LLC, History of Total System Life Cycle Cost and Fee Adequacy Assessments for the Civilian Radioactive Waste Management System, MIS-CRW-SE-000007 REV 00, at 10, 12, and 14-33 (Sep. 2008).

[29] DOE, Nuclear Waste Fund Fee Adequacy: An Assessment, DOE/RW-0291P, at 5 (November 1990); *see also* DOE, Fiscal Year 2007 Civilian Radioactive Waste Management Fee Adequacy Assessment Report, DOE/RW-0593, at 12 (July 2008) ("It is understood that any adjustment to the fee would require compelling evidence that such an adjustment is necessary to ensure future full cost recovery."); DOE, Memorandum for the Secretary, "INFORMATION: The 2008 Determination of the Adequacy of the Nuclear Waste Fund Fee." EXEC-2009-012439, Attachment, at 10 (September 29, 2009) (same).

designated as the sole site for characterization by the 1987 amendments, the Secretary consistently decided against proposing a fee adjustment, in part because DOE's disposal program had not yet matured to the point where program costs could be defined with sufficient certainty to justify an adjustment. For example, according to the Secretarial memo accompanying the 1984 annual review, "[s]ince substantial uncertainty surrounds both program cost and revenue projections at this time, it is prudent to delay a decision to adjust the fee structure until the program is more clearly defined."[30] Similarly, in both the 1986 and 1987 annual reviews, DOE concluded that "[f]ee revisions may be recommended within a few years, when more accurate program cost estimates will be developed as the program matures from its present conceptual design phase to the engineering design phase."[31]

Even more to the point, as recently as 2009, the analysis done by DOE determined that the fee amount was appropriate to meet the anticipated costs of the proposed Yucca Mountain repository. One cannot determine with any confidence at this time precisely how much the yet-to-be-selected disposal alternative will cost, but the closest proxy – albeit an imperfect one – is the costs of the proposed Yucca facility. Thus, the fact that the Department recently concluded that the fee should not be varied in order to meet the costs of the Yucca repository provides additional support for the conclusion that the fee should not be altered at this time (and, in particular, should not be lowered).

At the same time, it is important to note that the Department is committed to continuing to review the fee annually. If the Department, informed by the recommendations of the BRC, moves toward a means of disposal that will require a different level of fee than has been charged over the past several decades, and there is compelling evidence that the current revenues are inadequate or excessive, the Department will promptly propose an adjustment of the fee.

In sum, absent a basis for concluding that disposition will not require fees at the current level, the statute does not contemplate – and certainly does not mandate – that the Secretary raise, lower, or suspend the fee. Indeed, if the Secretary were to stop collecting the fee (i.e., by adjusting the fee to zero), that action would contravene the principle of generator responsibility embodied in Section 111(b)(4) and would be inequitable to future ratepayers. Such an adjustment would allow utilities that generate SNF during the time the fee is zero to avoid paying the costs of their SNF disposal, and would effectively shift those costs onto future ratepayers after a disposal solution is identified and the fee is adjusted back to a positive amount.[32] This type of cost-shifting was not what Congress intended when it set up the Nuclear Waste Fund.[33] It is clear

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30 DOE, Memorandum to the Secretary, "Submittal of Annual Fee Adequacy Evaluation Report for the Office of Civilian Radioactive Waste Management Program." HQZ.870307.8942, at 2 (July 16, 1984).

31 DOE, Nuclear Waste Fund Fee Adequacy: An Assessment, DOE/RW-0020, at 1-2 (March 1986); DOE, Nuclear Waste Fund Fee Adequacy: An Assessment, HQS.880517.227, at 2 (June 1987).

32 In such a scenario, attempting to collect the fee from the original generators of SNF would not be an option because neither the NWPA nor the standard contract permits retroactive adjustment of the fee. *See* 10 C.F.R. 961.11, Article VIII.A.4 ("Any adjustment to the ... fee ... shall be prospective.").

33 *See, e.g. Consolidated Edison Co. of New York, Inc. v. U.S. Dept. of Energy*, 870 F.2d 694, 698 (D.C. Cir. 1989) (recognizing that Congress intended to avoid "unfairly burdening future ratepayers.").

from the plain language of the NWPA that Congress intended utilities to pay the full costs of disposing of the SNF they generate.[34]

CONCLUSION: The NWPA provides that the standard contract requires generators or owners of HLW or SNF to pay fees in return for DOE's obligation to accept HLW and SNF and be responsible for its final disposition. DOE has clearly stated that termination of the Yucca Mountain project will not affect its commitment to fulfill its obligations under the NWPA and the standard contracts. DOE must continue to collect the fees to have sufficient revenues to carry out its obligations to accept and dispose of HLW and SNF. Presently, there is no reasonable basis, and certainly no compelling evidence, that justifies any proposed adjustment of the fee, either upwards or downwards, to achieve full cost recovery. Moreover, the best available proxy (though imperfect) indicates that the fee should be retained at the current level. Additionally, adjustment of the fee to zero would be inequitable to past and future ratepayers who pay utility bills for electricity that reflect payment of the fees. In such circumstances, the NWPA requires the fee to remain at its current amount of 1 mill per kilowatt-hour that was established in the NWPA.

[34] NWPA, sec. 111 ("Findings and Purposes ... (a) FINDINGS–THE Congress finds that ... (4) ... the costs of [HLW and SNF] disposal should be the responsibility of the generators and owners of such waste and spent fuel ... (b) PURPOSES–The purposes of this subtitle are ... (4) to establish a Nuclear Waste Fund ... that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.").

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

COMMISSIONER

November 1, 2010

The Honorable Jim Sensenbrenner
Ranking Member, Select Committee on
Energy Independence and Global Warming
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Sensenbrenner:

I write to supplement the October 27, 2010 response of NRC Chairman Gregory Jaczko to your letter of October 13, 2010, regarding the NRC's review of the U.S. Department of Energy's license application for a deep, geologic repository. In his reply to you, Chairman Jaczko states that the NRC staff "is following established Commission policy to begin to close out the [High Level Waste] HLW program." I disagree and write to provide my individual view as a member of the Nuclear Regulatory Commission who was serving during the Commission's review and approval of the NRC's Fiscal Year 2011 budget request to the Congress.

When the Commission voted to approve budget justification language related to NRC's proposed HLW activities for FY 2011, a majority of the Commission's members supported language stipulating that orderly closure of the program activities would occur "[u]pon the withdrawal or suspension of the licensing review." The budget justification submitted to the Congress, and pending there now, was modified to include this language. These precursors have not occurred and an adjudicatory appeal related to DOE's request to withdraw its application lies unresolved before the Commission, making the orderly closure of NRC's program, in my view, grossly premature.

As noted by Chairman Jaczko in his response to you, the Commission declined to revisit this budgetary matter in response to a proposal of Commissioner Ostendorff in October of this year. Consequently, deliberation of the agency's budget request in January of 2010 constitutes the sole time the full Commission affirmatively took up and decided the policy of what would comprise the NRC's HLW activities for FY 2011. As a member of the Commission, now and at that time, I differ in my interpretation of the "established Commission policy" in this case and appreciate the opportunity to communicate this view to you and other interested members of the Committee.

Respectfully,

Kristine L. Svinicki

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

November 1, 2010

The Honorable William D. Magwood, IV
Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Commissioner Magwood:

Chairman Jaczko has stated previously that an effective regulator acts openly and transparently, describing openness as access to information and transparency as a clear explanation of the decision-making process. Over the past several months, the Nuclear Regulatory Commission's actions on the license application to build a repository at Yucca Mountain have fallen far short of those ideals--including withholding important licensing documents from the public and failure to conclude the adjudicatory review of DOE's motion to withdraw the license application in a timely fashion. As such, it is no surprise that the public and the agency's own employees are increasingly questioning the agency's credibility.

A crucial first step to rebuild the public's trust is simply to conclude the adjudicatory proceeding and answering the simple question of whether DOE can lawfully withdraw the license application. Answering this question would also eliminate any opportunity for tortured interpretations of budgetary authority under Continuing Resolutions regarding whether the staff should continue their review of the license application. Please respond in writing to the following questions:

1. Have you voted in the adjudicatory proceeding regarding the Atomic Safety and Licensing Board's ruling that DOE cannot lawfully withdraw the Yucca Mountain license application? If so, when?
2. If not, when do you anticipate voting on the matter?

These questions are simple, straightforward, and of great interest to many stakeholders. I respectfully request that each of you respond by November 5, 2010.

Sincerely,

James M. Inhofe
Ranking Member
Senate Committee on Environment and Public Works

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

CHAIRMAN

November 5, 2010

The Honorable James M. Inhofe
Ranking Member, Committee on Environmental and Public Works
United States Senate
Washington, DC 20510

Dear Senator Inhofe:

This is in response to your November 1, 2010 letter about the adjudicatory proceeding regarding the withdrawal of the Yucca Mountain license application. This is an unusual request. Under the Commission's voting process, initial votes on adjudicatory matters are essentially an exchange of preliminary views for discussion and deliberation among the Commissioners. Not until deliberations are complete does the Commission vote on a final Order. The decision of the Commission as a collegial body is captured in this final Order, which is publicly affirmed, and is the public record of the Commission's decision. Therefore, my response to your request must be limited in nature.

Regarding my vote, I first voted on August 25, 2010. I subsequently withdrew my vote and continued active consultation with my colleagues before re-voting on October 29, 2010.

Thank you for your interest in an ongoing adjudication currently before the Commission, and for respecting the importance of maintaining the integrity of the internal deliberative process.

Sincerely,

Gregory B. Jaczko

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

COMMISSIONER

November 4, 2010

The Honorable James M. Inhofe
Ranking Member, Committee on
Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Inhofe:

I write in response to your November 1, 2010 letter regarding the U.S. Department of Energy's request to withdraw its license application for development of a deep, geologic repository at Yucca Mountain.

I filed my vote on this matter with the Secretary of the Commission on August 25, 2010.

Respectfully,

Kristine L. Svinicki

.....

(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. RES. _____

Condemning the unilateral decision of the Chairman of the Nuclear Regulatory Commission to begin the closure of the Yucca Mountain license application and calling on the Nuclear Regulatory Commission to resume license activities immediately pending further direction from Congress.

IN THE HOUSE OF REPRESENTATIVES

Mr. SIMPSON submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Condemning the unilateral decision of the Chairman of the Nuclear Regulatory Commission to begin the closure of the Yucca Mountain license application and calling on the Nuclear Regulatory Commission to resume license activities immediately pending further direction from Congress.

Whereas in 1987 Congress amended the Nuclear Waste Policy Act of 1982 by designating Yucca Mountain as the only option for a long-term storage site by a vote of 237–181 in the House of Representatives and 61–28 in the Senate;

Whereas Congress reaffirmed Yucca Mountain's designation as the only option for a long-term storage site in 2002 by a vote of 306–117 in the House of Representatives and 60-39 in the Senate;

Whereas in 2007 the House of Representatives overwhelmingly rejected by a vote of 80-351 an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program;

Whereas the Department of Energy has already collected $24,000,000,000 in fees from nuclear utilities and their ratepayers;

Whereas the Federal taxpayer has already spent over $8,500,000,000 studying Yucca Mountain as the permanent site for nuclear waste storage;

Whereas the Department of Energy total liability for breach of contracts requiring disposal of spent nuclear fuel and high-level waste from civilian nuclear reactors could reach as much as $50,000,000,000;

Whereas the Nuclear Regulatory Commission Atomic Safety and Licensing Board found that the Yucca Mountain license application cannot be legally withdrawn;

Whereas the Fiscal Year 2010 Energy and Water Development and Related Agencies Appropriations Act provided funding to continue the Yucca Mountain license application;

Whereas Congress has provided no funding for activities related to the closure of the Yucca Mountain license application;

Whereas the Fiscal Year 2011 Continuing Resolution provided no funding to undertake new initiatives;

Whereas the House Republican members of the Energy and Water Appropriations Subcommittee stated in a letter dated October 20, 2010, that they expect the Nuclear Regulatory Commission to continue its fiscal year 2010 licensing activities until Congress provides additional direction and funding;

Whereas 2 Commissioners disagreed with the decision to shut down such activities and noted that shutdown is inconsistent with the Continuing Resolution; and

Whereas the Nuclear Regulatory Commission Inspector General has launched an investigation of the Chairman's unilateral decision to terminate the review of the Yucca Mountain application: Now, therefore, be it

1 *Resolved,* That the House of Representatives—

2 (1) condemns the unilateral decision of the
3 Chairman of the Nuclear Regulatory Commission to
4 begin the closure of the Yucca Mountain license ap-
5 plication; and

6 (2) calls on the Nuclear Regulatory Commission
7 to resume license activities immediately pending fur-
8 ther direction from Congress.

Congress of the United States
Washington, DC 20515

November 16, 2010

Mr. Jeffrey Zients
Acting Director, Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Zients:

I write today regarding recent actions by the Chairman of the Nuclear Regulatory Commission, Gregory Jaczko, to shut down the review of the Department of Energy's application for Yucca Mountain.

While it is widely known that the Obama Administration opposes Yucca Mountain, it remains our nation's repository for spent nuclear fuel and high level defense waste under the law. In fact, the Atomic Safety Licensing Board has rejected the Department of Energy's motion to withdraw the Yucca Mountain license application. To date, the Nuclear Regulatory Commission has taken no action to overturn this ruling. And, litigation is pending in federal court.

Despite the fact that the federal government is operating under a continuing resolution based on the Fiscal Year 2010 appropriations levels that are law, Chairman Jaczko is using President Obama's Fiscal Year 2011 budget proposal as the justification for his decision to halt the license review. As you know, the Fiscal Year 2011 budget proposal was simply a request – it was never approved by Congress and does not have the force of law.

I write to request a detailed explanation from the Office of Management and Budget outlining the legal budgetary authority of Chairman Jaczko to shut down the Yucca Mountain review and terminate the project. I also request a list of other federal agencies that are operating under the President Obama's Fiscal Year 2011 budget request as opposed to the congressionally approved continuing resolution and existing law.

Thank you for your prompt attention to this request.

Sincerely,

Doc Hastings
Member of Congress

Paul Ryan
Member of Congress

Mike Simpson
Member of Congress

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EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC

Counselors at Law

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November 18, 2010

ASLBP 09-892-HLW-CAB04
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

Re: Docket No. 63-001-HLW
In the Matter of U.S. Department of Energy (High Level Waste Repository)
Nevada Status Inquiry

Dear Judges Moore, Ryerson and Wardwell:

The State of Nevada writes seeking clarification of the status of an important matter still pending before the Construction Authorization Board (CAB) – rulings on the eleven Phase 1 legal issues.

In its June 30, 2009 Memorandum and Order on the admission of contentions, CLI-09-14 at page 14, the Commission indicated that, "in the interest of moving forward expeditiously where possible in this proceeding," the CAB should "provide a thorough and meaningful discussion of the legal issues and the bases for resolving them." The CAB moved promptly to set the appropriate schedules for defining, briefing and arguing eleven Phase 1 legal issues. All of these legal issues were fully briefed and argued on January 26-27, 2010. They are still pending.

On February16, 2010, the CAB issued an unopposed stay of the proceeding pending its disposition of the Department of Energy's (DOE's) (then) expected motion to withdraw its license application. That motion was filed on March 3, 2010. On April 23, 2010, in CLI-10-13, the Commission vacated the CAB's further suspension order of April 6, 2010, and directed the Board to establish a briefing schedule and issue a decision on DOE's motion to withdraw its license application. The Commission also (at page 5) said the Board should "continue case management and resolve all remaining issues promptly." On June 29, 2010, in LBP-10-11, the Board denied DOE's motion to withdraw and granted the pending intervention petitions of the states of Washington and South Carolina, the county of Aiken in South Carolina, the Prairie Island Indian Community, and the National Association of Regulatory Utility Commissioners, as

well as the amicus curiae filing by the Florida Public Service Commission. One contention of each new party was admitted (whether DOE lacks authority under the Nuclear Waste Policy Act to withdraw its application). See LBP-10-11 at page 47.

With the issuance of LBP-10-11, deciding DOE's motion to withdraw, the Board's February 16, 2010 stay of the proceeding expired according to its terms. No other stay is in effect. Accordingly, the parties have been filing the required LSN and updated witness reports with the CAB. However the eleven Phase 1 legal issues are still pending. It seems to Nevada that a decision on these issues is overdue.

The CAB may be waiting for a decision by the Commission regarding DOE's motion to withdraw its application. However, the Commission's instruction in CLI-10-13 that the Board should "continue case management and resolve all remaining issues promptly" would seem to include the eleven legal issues, especially now that the CAB has addressed what was obviously its first priority – deciding DOE's motion to withdraw. Accordingly, Nevada would appreciate the CAB advising it and the other parties of its schedule for deciding these eleven issues.

A table of significant filings and events related to the eleven legal issues is attached for your information.

Sincerely,

(electronically signed)

Martin G. Malsch
mmalsch@nuclearlawyer.com

MGM:lb
Enclosure

Table of Significant Filings and Events Related to Legal Issues

DATE OF FILING	NATURE OF FILING
December 19, 2008	Nevada petitions to intervene, identifying 19 legal contentions
January 16, 2009	DOE answers Nevada's petition, challenging all legal contentions
February 9, 2009	NRC Staff answers Nevada's petition, challenging all legal contentions
February 24, 2009	Nevada separately replies to answers filed by DOE and NRC Staff
May 11, 2009	Board issues LBP-09-06, admitting 28 legal contentions from Nevada (designating some contentions as legal notwithstanding how they were pled)
May 21, 2009	NRC Staff appeals admissibility of legal contentions to Commission
May 29, 2009	Nevada opposes NRC Staff's appeal of LBP-09-06
June 30, 2009	Commission issues CLI-09-14, affirming admissibility of legal contentions
July 21, 2009	Board issues Serial Case Management Order seeking information on relationship of legal contentions to NRC Staff SER Volumes
August 17, 2009	DOE responds to Board Order of July 21st
August 21, 2009	Nevada responds to Board Order of July 21st
September 30, 2009	Board issues Case Management Order #2, requiring parties to identify a legal question for each of the 11 legal contentions to be addressed in Phase I
October 6, 2009	Nevada (10 legal contentions), NEI (1 legal contention) and DOE jointly respond to CMO#2; Nevada and DOE also separately respond on 1 issue
October 13, 2009	NRC Staff comments on October 6th separate responses by DOE and Nevada
October 23, 2009	Board issues Order scheduling 11 Phase I legal issues for briefing
December 7, 2009	Nevada, NEI, DOE and NRC Staff file opening briefs on Phase I legal issues
December 9, 2009	Board issues LBP-09-29, admitting another Nevada legal contention
December 22, 2009	NRC Staff responds to Board questions from LBP-09-29
December 30, 2009	Nevada replies to NRC Staff response to Board questions from LBP-09-29
January 6, 2010	Nevada, NEI, DOE and NRC Staff file reply briefs on Phase I legal issues
January 26-27, 2010	Board conducts oral argument of briefs on Phase I legal issues
February 16, 2010	Board stays proceeding until it resolves DOE's expected withdrawal motion
March 3, 2010	DOE files motion to withdraw its Yucca Mountain license application
May 17, 2010	Nevada answers DOE's motion to withdraw
June 3, 2010	Board conducts oral argument on DOE's motion to withdraw
June 29, 2010	Board issues LBP-10-11 denying DOE's motion to withdraw
June 30, 2010	Commission Secretary schedules briefs on LBP-10-11
July 9, 2010	Nevada (and other parties) file briefs with Commission on LBP-10-11
July 19, 2010	Nevada (and other parties) file reply briefs with Commission on LBP-10-11

Congress of the United States
Washington, DC 20515

November 19, 2010

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

Dear Chairman Jaczko:

We write to you today to request the release of the Nuclear Regulatory Commission's decision regarding the Department of Energy's authority to withdraw the application for the Yucca Mountain nuclear waste repository.

As Chairman, you have stressed the importance of "conduct[ing] the public's work in an open and transparent manner." Unfortunately, the continued delay in finalizing the adjudicatory review of the Department of Energy's motion to withdraw the license application for Yucca Mountain fails to live up to this pledge.

It has come to our attention that Commissioners William Ostendorff, Christine Svinicki, and William Magwood filed their votes with the Secretary of the Commission nearly two months ago. In fact, it is clear you delayed the resolution of this matter by withdrawing your vote of August 25, 2010, before submitting the only outstanding vote on October 29, 2010 – six weeks after the third Commissioner cast his vote.

The NRC has had this issue pending since July 16, 2010. During that time, the D.C. Circuit Court has postponed proceedings while they await the NRC's response to the Atomic Safety and Licensing Board's decision. With all of the votes submitted, it is time to fulfill your commitment to openness and provide the public with the answers they deserve. Therefore, we ask that you conclude your deliberations and affirm a final Order.

Please respond regarding your plans, including specific dates, for issuing a final order on this matter by December 2, 2010.

Thank you for your timely attention to this matter.

Sincerely,

Doc Hastings
Member of Congress

Darrell Issa
Member of Congress

James Sensenbrenner
Member of Congress

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BLUE RIBBON COMMISSION
ON AMERICA'S NUCLEAR FUTURE

November 22, 2010

Mr. Tim Frazier
Designated Federal Official, Blue Ribbon
Commission on America's Nuclear Future
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Dear Mr. Frazier:

At our request, the Commission staff is in the process of assembling information on the costs and financing of the US program to manage used fuel and high-level nuclear wastes. To assist in the completion of this effort, it would be most helpful if the Department could provide the information listed in the attachment.

Please contact John Kotek, the Commission's Staff Director, if you have any questions regarding this request.

Sincerely,

Lee Hamilton
Co-Chairman

Brent Scowcroft
Co-Chairman

Attachment

DOE Inputs Needed for
High-Level Waste Program Cost and Financing Overview

1. Nuclear waste fund status and prospects:
   - The current balance of the Nuclear Waste Fund
   - The current annual receipts of the nuclear waste fund and projections of future fee receipts.
   - Annual earnings of the fund at its current level
   - Past annual fee payments into the Nuclear Waste Fund
   - Annual defense-related appropriations for the high level waste program (historical)
   - One-time nuclear waste fees currently payable, with interest
   - Annual appropriations from the Nuclear Waste Fund since its inception

2. Civilian waste standard contract settlements and litigation

   - The most recent annual liabilities report based on data from past settlements.
   - Any available information on costs to government of litigation to date, including attorney costs, expert costs and litigation support).

3. Repository cost projections
   - The annual disposal cost numbers that supported the 2008 fee adequacy analysis, i.e. the 2008 equivalent of Table C-1, Annual Cost Profile, in the 2001 Total System Lifecycle Cost report, showing the annual breakdown in projected disposal costs between MGR, WAST, and PI & I.

4. DOE defense waste and R&D costs

   - Estimates of DOE-EM spent fuel management costs:
     - Current and projected costs of DOE-owned spent fuel management
     - Current and projected costs of DOE-owned HLW waste management
     - Current and projected costs of 'returned fuel" management (foreign research reactors etc)

   - Costs of DOE and National lab research and development into nuclear waste management and fuel cycle technology - past, current, and projected budgets.

State Nuclear Safety Inspector Office

December 2010 Monthly Report to the Legislature

Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 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 were no longer included in the report. Instead, this information was 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 December the general status of the ISFSI was normal. There were no spurious alarms due to environmental conditions that warranted further investigations.

There was no fire related impairment but there was one security-related impairment carried over from November into December. The fence project finally came to a close on December 7th.

There were 28 security events logged for the month. Twenty-two of those were for transient environmental issues that cleared themselves within a short time. Four of the events were due to computer error codes that had no impact on operations. The error codes were identified by the vendor and repaired as the computers had been recently replaced and the software upgraded. One event was associated with the fence project while the other documented the loss of the dedicated phone connection to the Nuclear Regulatory Commission which was restored later the same day.

Eight condition reports[1] (CR) were written for the month of December and are described below.

- 1st CR: Written to track findings from a self assessment that was performed.
- 2nd CR: Documented incorrect procedure being used to process a visitor into the administratively controlled area.
- 3rd CR: Written to document the laboratory data quality issues associated with the June radiological ground water analyses.
- 4th CR: Involved tracking findings from a review of the training program.

[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.

5th CR: Documented deficiencies in logging incoming licensing correspondence with the Nuclear Regulatory Commission.
6th CR: Involved tracking findings from a review of the Condition Report process.
7th CR: Documented observations from a Quality Assurance Surveillance.
8th CR: Noted problems with the Nuclear Regulatory Commission's (NRC) phone ringing on its own. The NRC was notified and the phone line repaired later that day.

Environmental

On December 28th the State performed an assessment of its Radiological Environmental Monitoring Program around the Maine Yankee site. The purpose of the assessment was to consolidate the number of thermoluminescent dosimeters[2] (TLD) monitoring the ambient radiation levels near the ISFSI. Four of the fourteen Bailey Cove TLDs were reassigned as ISFSI TLDs to ensure coverage for the sixteen points of the compass. The four new stations will be identified as N, O, P, and Q. Currently, only two stations remain as Bailey Cove stations. These stations are co-located with the State's solar powered environmental radiation monitors on the Maine Yankee site. A review of whether or not these solar powered units should continue to operate will be assessed in the fall of 2011.

Although the air sampling station at Maine Yankee was discontinued, the State still maintains an active air sampling station on the roof of the Health and Environmental Testing Laboratory that acted as a control for comparative purposes during Maine Yankee's operating and decommissioning years. The State air sampler is also available in radioactive fallout situations from national or global events.

Maine Yankee Decommissioning

The preliminary draft of the Confirmatory Summary Report detailing the State's involvement and independent findings is about 50% completed.

Groundwater Monitoring Program

On December 30th Maine Yankee's consultant forwarded to the State his review and assessment of the radiological groundwater results from the October re-sampling effort. The re-sampling was necessary to address the data quality issues that surfaced from the contractor's hasty effort to dismantle its laboratory facility. The State will review the groundwater data in January.

Other Newsworthy Items

1. On December 1st the Nuclear Waste Strategy Coalition (NWSC) held a conference call to update its members, of which Maine is a member, on the status of the Department of Energy's withdrawal of its Yucca Mountain license application before the Nuclear Regulatory Commission and the U.S. Court of Appeals for the District of Columbia Circuit, and the upcoming oral arguments on the National Association of Regulatory Utility Commissioners' 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. The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric

[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.

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.

2. On December 2nd the Nuclear Regulatory Commission (NRC) Staff responded to the NRC's Atomic Safety and Licensing Board's Order to move on Nevada's legal issues which were raised during the Yucca Mountain proceedings. The Staff did not oppose Nevada's motion.

3. On December 3rd the State participated in the third conference call of the Department of Energy's (DOE) Prospective Shipment Report (PSR) Ad Hoc Working Group on nuclear shipments. The purpose of the Group is to enhance the information DOE supplies to states affected by DOE's shipments. The states use the summary information in the PSR to help them plan and prepare for shipments. Recommendations from the Group will be presented at the National Transportation Stakeholders Forum in May 2011.

4. On December 6th the Secretary of the Nuclear Regulatory Commission responded to Representative Doc Hastings' November 19th letter requesting a finality to the Nuclear Regulatory Commission's deliberations on the Atomic Safety and Licensing Board's ruling denying the Department of Energy's motion to withdraw its Yucca Mountain license application. The Secretary noted that the issue was still under deliberation with no date for its completion. A copy of the letter is attached.

5. On December 7th Senior Counsel for the State of Washington's Attorney General Office sent a letter to the Clerk of the D.C. Circuit Court of Appeals expressing concern that they had not received an order from the Court on their September 28th motion to lift the stay and set an expedited briefing schedule. A copy of the letter is attached.

6. On December 8th the quarterly conference call of the Federal Energy Regulatory Commission rate case settlement briefing took place with representatives from the states of Connecticut, Maine and Massachusetts. The briefing provided the status of the nuclear waste lawsuits against the federal government, national activities, such as the Blue Ribbon Commission, Congress, the Nuclear Regulatory Commission, the Decommissioning Plant Coalition, the Nuclear Waste Strategy Coalition efforts, the National Conference of State Legislatures, the Council of State Governments and the National Association of Regulatory Utility Commissioners, and regional activities, such as those of the New England Governor's Conference and the New England Council. The General Counsel for the three Yankee sites, Maine Yankee, Connecticut Yankee and Yankee Rowe, stated that the federal government appealed the Court's September 7th decision granting the three Yankee plants $143.2 million, of which Maine Yankee was awarded $81.7 million. The Counsel also mentioned that the Department of Justice's FY 2011 budget requested a doubling of the number of attorneys to fight the utilities spent nuclear fuel lawsuits.

7. On December 8th the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB) issued an Order directing the NRC staff to file an explanation of why it can not issue Volume 3 of the Safety Evaluation Report on Yucca Mountain. On the same day the ASLB also ruled that the parties involved in the Yucca Mountain proceedings need to move forward on the State of Nevada's motion to pursue a ruling on its legal contentions to the Yucca Mountain license application.

8. On December 10th the U.S. Court of Appeals for the District of Columbia Circuit lifted its stay that was pending while waiting for the Nuclear Regulatory Commission's decision of their Atomic Safety and Licensing Board's denial on the withdrawal of the Yucca Mountain license application.

The Court also set an expedited briefing schedule in preparation for oral arguments. A copy of the Court Order is attached.

9. On December 13th the U.S. Court of Appeals for the District of Columbia Circuit issued its judgment dismissing the National Association of Regulatory Utility Commissioners' (NARUC) litigation claim for the Department of Energy (DOE) to conduct an annual assessment of and suspend the Nuclear Waste Fund fee established under the Nuclear Waste Policy Act. The Court considered the claims moot since the DOE had just issued the assessment, but noted that NARUC could now challenge DOE's assessment. A copy of the Court's judgment is attached.

10. In December the U.S. Nuclear Waste Technical Review Board (NWTRB) issued a document, entitled "Evaluation of the Technical Basis for Extended Dry Storage and Transportation of Used Nuclear Fuel." The report listed nine areas where information was lacking, such as in corrosion and degradation mechanisms in the sleeves containing the used fuel. Based on this review the Board recommended six areas for further research and development. The report is timely in light of the Administration's termination of the Yucca Mountain Project, the Nuclear Regulatory Commission's (NRC) final Waste Confidence Rule allowing storage of used nuclear fuel at reactor sites up to 120 years, and the NRC's directive to its staff to evaluate on-site storage for periods upwards of 300 years. The NWTRB was created in 1987 by amendments to the Nuclear Waste Policy Act of 1982 and was charged to independently assess the Department of Energy's technical activities relative to the spent nuclear fuel and high level radioactive wastes. A copy of the executive summary is attached.

11. On December 14th the Nevada Commission on Nuclear Projects released its annual report and recommendations to the Governor and Legislature. The report details the developments that took place in 2010, such as the Yucca Mountain Project, the Department of Energy's High-Level Waste Program, the key lessons learned from the Yucca Mountain Project and the failed federal program. The report also speculated on what the future holds and provided its recommendations. The Commission recommended that the Governor and Legislature continue rejecting the site as a geologic used fuel repository, as a reprocessing facility and as a centralized interim storage facility.

12. On December 14th the Nuclear Regulatory Commission's Atomic Safety and Licensing Board issued its 37 page ruling essentially denying all eleven of Nevada's legal challenges to the Yucca Mountain license application. However, it did acknowledge that even though the legal issues were denied Nevada could still raise the safety implications of some of those legal issues.

13. On December 15th the Governor-Elect from Nevada issued a statement on the Nuclear Regulatory Commission's Atomic Safety and Licensing Board Ruling rejecting Nevada's eleven legal contentions raised in the initial filing with the Board. The Governor-Elect renewed Nevada's opposition to the storage of high level nuclear waste at Yucca Mountain, but was willing to consider other non-nuclear options. A copy of his press release is attached.

14. On December 15th the Nuclear Waste Strategy Coalition (NWSC) held its second monthly 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 (NRC) and the U.S. Court of Appeals for the District of Columbia Circuit, the recent Court ruling on the National Association of Regulatory Utility Commissioners' litigation of the Nuclear Waste Fund fee established under the Nuclear Waste Policy Act, and the recent order from the NRC's Atomic Safety and Licensing Board to resume hearings on Nevada's legal contentions on the Yucca Mountain proceedings. Further updates were provided on the Blue Ribbon Commission's Committee and Subcommittee hearings and the FY 2011 Appropriations' Continuing Resolution.

15. On December 16th the Executive Director of the Agency for Nuclear Projects issued a response to the recent Nuclear Regulatory Commission's Atomic Safety and Licensing Board's judicial order rejecting Nevada's legal contentions. A copy of the Director's open letter is attached.

16. In December the Massachusetts Institute of Technology's Center for Advanced Nuclear Energy Systems issued a report entitled" Key Issues Associated with Interim Storage of Used Nuclear Fuel". The report identifies and examines in more detail six key factors that may impact future decisions for interim storage facilities. They are:
    a) Whether the Yucca Mountain Project continues or is terminated,
    b) Will the U.S. change its policy to allow reprocessing or recycling,
    c) How long will it really take to site one or a few interim storage sites,
    d) Political implications of letting used fuel mount up at operating plants and how that affects current operations and future construction of new plants,
    e) Technically, how long can used fuel be stored wet or dry to ensure future shipments to a disposal, reprocessing or storage site occur without damaging the fuel,
    f) Costs comparisons between shipping used fuel to interim storage sites and eventually to a disposal site versus leaving the used fuel on-site until policy decisions are made.

17. On December 20th the State of Nevada filed its fourth update with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board that it had no other witnesses in the pending licensing application for the Yucca Mountain Project.

18. On December 22nd the Chairman of the Nuclear Regulatory Commission responded to Representative John Spratt's October 11th letter expressing deep concerns over the NRC's Yucca Mountain license application cessation. In the letter Chairman Jaczko assured Representative Spratt that the actions he initiated were in conformance with appropriations law. On the same day he sent a similar letter to Representative Michael Simpson also reassuring him of his actions while providing additional insight on his justification to close the Yucca Mountain Project. Identical letters were sent to five other Representatives. Copies of both letters are attached.

19. On December 22nd the State of Nevada filed its fifth update with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) that it had no additional witnesses in the pending licensing application for the Yucca Mountain Project for Phase I discovery.

20. On December 22nd the Nuclear Regulatory Commission (NRC) Staff filed with the NRC's Atomic Safety and Licensing Board its response to the ASLB's December 8th Order on the issuance of the staff's Safety Evaluation Report (SER) Volume 4 on Yucca Mountain. With the halting of the Yucca Mountain Project review, the Staff related it would not issue Volume 4 of the SER in December 2010 as originally planned and the schedule for issuing Volume 4 is indeterminate.

21. On December 23rd the Nuclear Regulatory Commission (NRC) Staff filed with the NRC's Atomic Safety and Licensing Board that it had no additional witnesses in the Phase I National Environmental Policy Act contentions pending licensing application for the Yucca Mountain Project.

22. On December 23rd the Nuclear Regulatory Commission published its final revision to its Waste Confidence decision allowing for the storage of used nuclear fuel at reactor sites up to 120 years. In arriving at that conclusion the Commission deemed there was reasonable assurance that a mined geologic disposal would be available in the future when necessary.

23. On December 27th White Pine County in Nevada notified the Nuclear Regulatory Commission's Atomic Safety and Licensing Board that it had no additional witnesses on the Yucca Mountain license application.

24. On December 28th the Joint Timbisha Shoshone Tribal Group notified the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) that it had no additional party witnesses on the Yucca Mountain license application. On the same day Inyo County also filed with the ASLB that it had no additional other witnesses in the license application proceedings.

25. On December 29th Inyo County in California filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board that it had no additional party and other witnesses on the Yucca Mountain proceedings.

26. On December 30th the Nuclear Regulatory Commission's Staff filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) that it had no additional witnesses relative to its Safety Evaluation Report for Volume 1.

27. On December 30th Clark County in Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board that it had no additional party and other witnesses on the Yucca Mountain proceedings.

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

SECRETARY

December 6, 2010

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

Dear Congressman Hastings:

This responds to your letter of November 19, 2010, in which you expressed concerns regarding Commission action with respect to the Construction Authorization Board's decision denying the Department of Energy's motion to withdraw its application for the Yucca Mountain geologic repository. You request, in particular, that deliberations be concluded and a final order be affirmed, and request a date certain for issuance of a final order by the Commission in this matter.

Given that the adjudicatory process is ongoing, the Commission itself cannot discuss or comment on the issues involved. No specific date has been established for completion of the matter.

A copy of your letter and this response will be served on the participants in the *Yucca Mountain* proceeding. In addition, we will keep you informed of the Commission's decisions in this matter.

Sincerely,

Annette L. Vietti-Cook

cc: Service List

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Ecology Division
2425 Bristol Court SW 2nd Floor • Olympia WA 98502
PO Box 40117 • Olympia WA 98504-0117 • (360) 586-6770

December 7, 2010

Mark Langer, Clerk
D.C. Circuit Court of Appeals
333 Constitution Avenue NW
Room 5523
Washington DC 20001

RE: ***In re Aiken County***
DC Circuit Court of Appeals No. 10-1050 ***consolidated***

Dear Mr. Langer:

On September 28, 2010, the consolidated Petitioners in the above matter (Petitioners) filed a corrected motion to lift stay and re-establish an expedited briefing schedule in this case. The Respondents filed joint response briefing on October 12, 2010. The Petitioners filed reply briefing on October 18, 2010, followed by a supplement to their reply on October 25, 2010. The federal Respondents supplemented their response on October 27, 2010, and intervenor State of Nevada filed a separate response to the Petitioners' supplemental filing on October 28, 2010.

The Petitioners' September 28 motion requested that the stay be lifted and also sought expedited consideration by the Court. As of today's date, we have not yet received an order on our motion. I am writing on behalf of the Petitioners to bring this matter to your attention. While we do not wish to intrude on the Court's prerogative to carefully consider our motion, we also want to make sure that our motion has not been inadvertently overlooked. Therefore, we would appreciate your help in insuring that our motion has come to the attention of the Court.

Thank you for your attention to this matter.

Sincerely,

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

AAF:dmm
cc: All Counsel of Record

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: December 10, 2010

In re: Aiken County,

Petitioner

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

BEFORE: Henderson, Garland, and Brown, Circuit Judges

ORDER

Upon consideration of the motion to lift stay and set expedited briefing schedule and the supplement thereto, the response to the motion and the supplements thereto, and the reply, it is

ORDERED that the motion to lift stay and set expedited briefing schedule be granted. It is

FURTHER ORDERED that the following revised briefing schedule apply in these consolidated cases:

Joint Brief of Petitioners and Intervenor NARUC	Already Filed
Brief of Amicus Curiae in support of the Petitioners Nuclear Energy Institute	Already Filed
Brief(s) of Respondents and Intervenor State of Nevada (not to exceed 23,000 words in the aggregate, divided as the parties deem fit)	January 3, 2011

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050 **September Term 2010**

Joint Reply Brief of Petitioners and Intervenor NARUC (not to exceed 7,000 words)	January 18, 2011
Deferred Appendix	February 1, 2011
Final Briefs	February 8, 2011

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By: /s/
Amy Yacisin
Deputy Clerk

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1074 **September Term, 2010**

FILED ON: DECEMBER 13, 2010

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
PETITIONER

v.

UNITED STATES DEPARTMENT OF ENERGY AND UNITED STATES OF AMERICA,
RESPONDENTS

Consolidated with 10-1076

Petition for Review of a Decision of the
United States Department of Energy

Before: SENTELLE, *Chief Judge*; BROWN, *Circuit Judge*; and WILLIAMS, *Senior Circuit Judge*.

JUDGMENT

This appeal was considered on the record and the briefs submitted by the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The court has accorded the issues full consideration and has determined they do not warrant a published opinion. *See* D.C. CIR. R.36(d). It is

ORDERED AND ADJUDGED that the petition for review is dismissed.

The Nuclear Waste Policy Act (the "Act"), 42 U.S.C. § 10101 *et seq.*, authorizes the Secretary of Energy to enter into contracts with generators of high-level radioactive waste and spent nuclear fuel (together, "nuclear waste"). 42 U.S.C. § 10222(a)(1). The contracts must require the Secretary to dispose of the nuclear waste and, in exchange, require payment from the producers of the waste according to the terms of the Act. § 10222(a)(1), (5). For nuclear waste sold on or after 90 days after the enactment of the Act, the Secretary must charge a fee of 1 mil per kilowatt-hour, § 10222(a)(2), which is to be deposited into the Nuclear Waste Fund ("NWF"), § 10222(c). Thereafter, the Secretary must conduct an annual assessment of the NWF fee to determine whether it is adequate to offset the costs of its statutorily enumerated waste

disposal activities. § 10222(a)(4). If the Secretary determines that "insufficient or excess revenues" are being collected, he shall propose to Congress an adjustment of the fee. *Id.*

Petitioners ask us to order the Secretary to conduct an annual assessment under the Act and to suspend the NWF fee pending completion of his annual assessment. Because the Secretary has since conducted his annual assessment, these two claims are moot and we lack jurisdiction to address them. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969) ("[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome."). Petitioners also request that we order the Secretary to suspend the NWF fee in light of the current status of Department of Energy's waste disposal program. This request is unripe. *See Eagle-Picher Indus., Inc. v. EPA*, 759 F.2d 905, 917 (D.C. Cir. 1985) ("[T]he interest in postponing review is strong if the agency position whose validity is in issue is not in fact the agency's final position." (quoting *Continental Air Lines, Inc. v. Civil Aeronautics Bd.*, 522 F.2d 107, 125 (D.C. Cir. 1975) (en banc))). Given the Secretary's recent completion of his annual assessment, petitioners may now be able to properly raise this claim through a challenge to that assessment.

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

United States Nuclear Waste Technical Review Board

Evaluation of the Technical Basis for Extended Dry Storage and Transportation of Used Nuclear Fuel – Executive Summary

December 2010

Introduction

The U.S. Nuclear Waste Technical Review Board (Board) is tasked by the amendments to the Nuclear Waste Policy Act of 1982 to independently evaluate U. S. Department of Energy (DOE) technical activities for managing and disposing of used nuclear fuel and high-level radioactive waste. This report was prepared to inform DOE and Congress about the current state of the technical basis for extended dry storage[1] of used fuel and its transportation following storage. The Board expects that the report also will be valuable in informing the Blue Ribbon Commission on America's Nuclear Future and other interested parties on these issues.

When the used nuclear fuel that is currently stored at commercial nuclear power plant sites will be transported to other locations is not known. Understanding the length of time that used fuel can be stored without the fuel or the storage system components degrading to the extent that the ability to meet the regulatory requirements for continued storage is affected is a primary concern. In addition, understanding how the condition of the used fuel changes with time is important to determining when this may affect the ability to transport the fuel without significant risk of damage or release of radioactive materials. Finally, being able to predict confidently how used fuel will behave when handled after transportation to a repository or a processing facility also is necessary.

This report presents the results of a review of publicly available literature and published information on research completed to date related to extended storage and transportation of used fuel. The Board reports these results without challenging the technical findings of researchers but believes that they form a suitable basis for the evaluation presented here. In addition, regulatory authority, National Laboratory, and industry experts have been consulted to confirm the current state of knowledge and the research and development recommendations to enhance confidence in extended storage included in this report.

Background

Figure 1 shows graphics of typical pressurized and boiling-water reactor-fuel assemblies consisting of fuel rods arranged in assemblies. After irradiation these constitute the "used fuel" that is stored at reactor sites in pools and in dry-storage systems.

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[1] U.S. nuclear utilities are operating dry-storage facilities for used fuel that are licensed for operating periods of up to 60 years. The fuel in these facilities and the used fuel that will be discharged in the foreseeable future may need to remain in storage for much longer periods. Some have suggested that this period could extend to as long as 300 years. This report evaluates the technical basis for dry storage of used fuel during such extended periods but does not encompass extended wet storage of fuel. In this report, the term "fuel" refers to both the uranium pellets and the metal cladding.

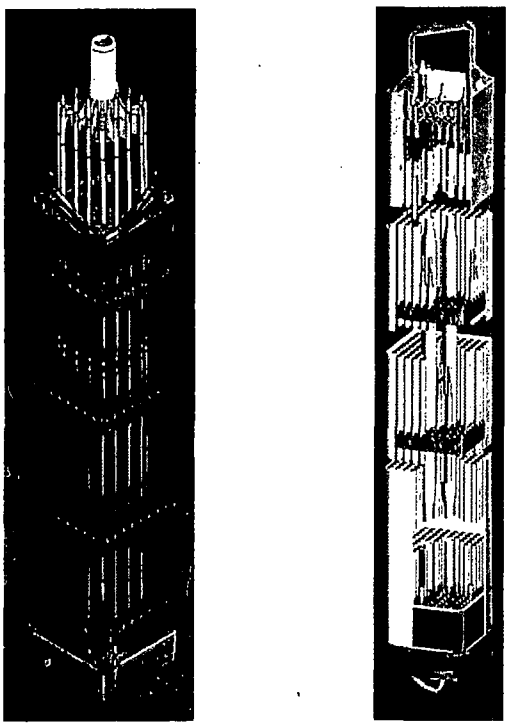

Figure 1. Typical Pressurized-Water Reactor (left) and Boiling-Water Reactor Fuel Assemblies

Courtesy Westinghouse (left)
http://gepower.com/prod_serv/products/nuclear_energy/en/downloads/gnf2_adv_poster.pdf (right)

Following discharge from the reactor, used fuel is initially stored in racks under water in pools up to 40 feet deep (see Figure 2). During this period of wet storage, some degradation may be detectable, although it is typically minimal.

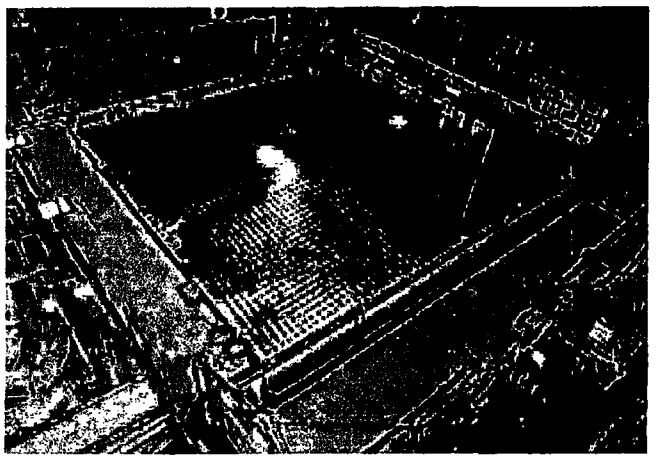

Figure 2. Typical Used-Fuel Storage Pool

(from http://www.nrc.gov/waste/spent-fuel-storage/pools.html)

Before the pools at a nuclear power plant are filled to their licensed capacity, the operator needs to provide additional storage capacity so that the power plant can continue operating. Thus, many utilities have built dry-storage facilities (referred to as Independent Spent Fuel Storage Installations, or ISFSIs) on their sites. These installations are large parking-lot-type concrete pads with protective fencing and continuous security surveillance. The fuel may be stored vertically in metal or concrete casks or horizontally in modular concrete storage facilities. The fuel inside concrete dry-storage casks is in bolted or welded canisters that are loaded in the spent-fuel pool and transferred to the ISFSI in an on-site transfer cask. Similar canisters are used for fuel that is stored in horizontal storage modules and may be used to contain fuel in metal storage casks, although some metal casks contain the fuel in open baskets without an inner canister.

Figure 3 shows concrete casks storing used fuel at the Connecticut Yankee Nuclear Power Plant site. Figure 4 shows typical components that constitute a concrete storage-cask system, including the multipurpose canister (MPC) and the vents that provide the airflow to cool the canister. Metal casks that contain the fuel in open baskets do not have the same ventilation arrangement but typically have external heat-transfer fins to assist with the cooling.

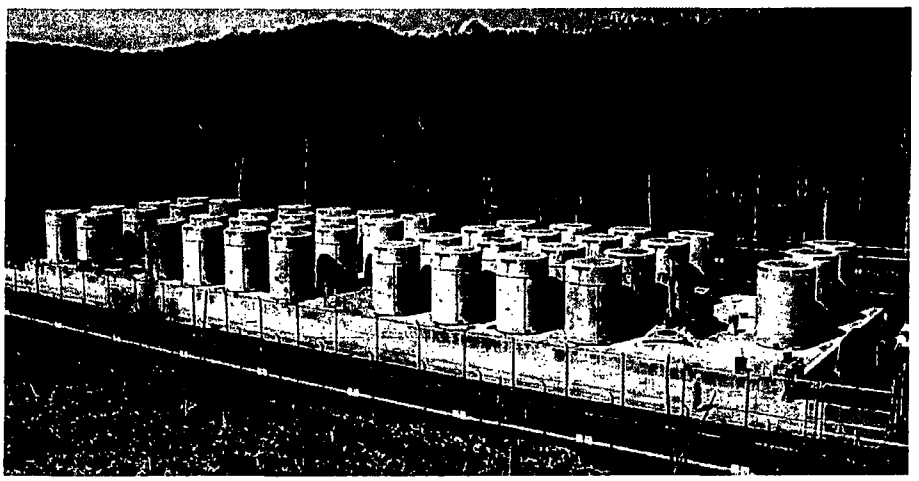

Figure 3. Independent Spent-Fuel Storage Installation

Photo from NAC International, Inc. with permission

Before used fuel is loaded from a pool into a canister, the canister is lowered into the storage pool inside a shielded transfer cask. If the fuel is to be loaded into a metal cask with an open basket, the cask is lowered into the pool with the basked installed. Following loading of the fuel, a lid is installed and the cask is removed from the pool. The water is drained from the cask, and if a canister is being used, the water also is drained from the canister. The lid then is bolted or welded in place, and operations to dry the fuel are started. This process typically involves several cycles of alternately applying a vacuum and backfilling the canister, or the cask, with helium. During the periods when the vacuum is applied, the fuel rods are not cooled and the temperature of the fuel rises. The temperature rise enhances drying, but the temperature has to be controlled below predetermined limits to prevent thermal stresses that could result in cladding damage. Once the

drying process is completed, the canister or cask is pressurized with helium, both to provide improved heat transfer and to minimize the potential for fuel degradation during subsequent storage.

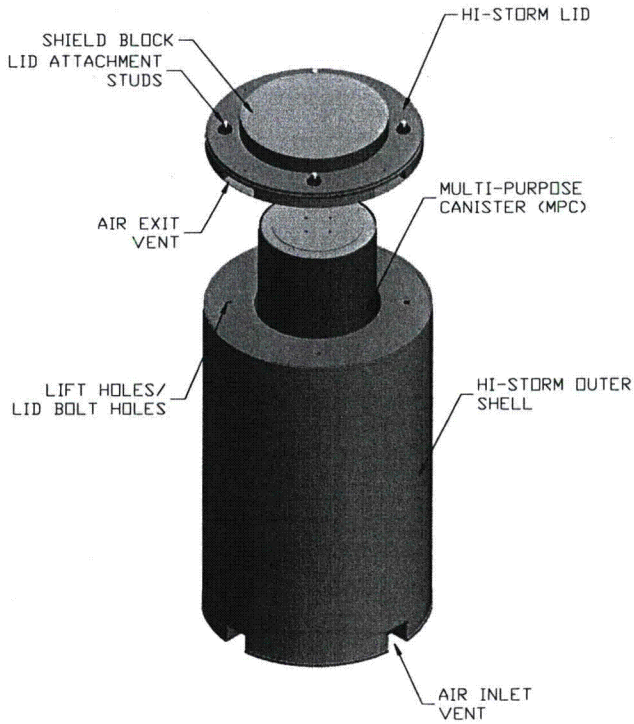

Figure 4. Typical Vertical Dry Cask-Storage System

Graphic Courtesy of Holtec International, Inc.

Findings

This review finds that fuel rods discharged from nuclear power plants are typically in good condition with only a very small percentage of rods having cladding defects. Early references reported that less than 0.04 percent of fuel rods failed, and later plant records indicate that the failure rate has decreased to less than 0.0005 percent for more recently discharged fuel. During preparation for transfer to dry-storage facilities, failed fuel assemblies are loaded into specifically designed compartments of the canisters or metal casks, separate from intact fuel assemblies.

The fuel-drying process is not perfect. After drying, residual water remains in unknown amounts that can affect subsequent internal degradation processes. The vacuum-drying heat cycles can change the nature of the hydrogen in the cladding and stress the fuel.

According to the literature review, 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.

The most significant potential degradation mechanisms affecting the fuel cladding during extended storage are expected to be those related to hydriding, creep, and stress corrosion cracking. These mechanisms and their interactions are not well understood. New research suggests that the effects of hydrogen absorption and migration, hydride precipitation and reorientation, and delayed hydride cracking may degrade the fuel cladding over long periods at low temperatures, affecting its ductility, strength, and fracture toughness. High-burnup fuels tend to swell and close the pellet-cladding gap, which increases the cladding stresses and can lead to creep and stress corrosion cracking of cladding in extended storage. Fuel temperatures will decrease in extended storage, and cladding can become brittle at low temperatures.

Only limited references were found on the inspection and characterization of fuel in dry storage, and they all were performed on low-burnup fuel after only 15 years or less of dry storage. Insufficient information is available on high-burnup fuels to allow reliable predictions of degradation processes during extended dry storage, and no information was found on inspections conducted on high-burnup fuels to confirm the predictions that have been made. The introduction of new cladding materials for use with high-burnup fuels has been studied primarily with respect to their reactor performance, and little information is available on the degradation of these materials that will occur during extended dry storage. Consequently, without any data for predicting how aging affects the fuel condition over longer storage periods, vendors model the condition of high-burnup used fuel in storage on the basis of a limited series of examinations of fuel that also form the basis for predicting the behavior of used fuel during extended dry storage and normal handling and transport of used fuel and in the event of transportation accidents.

As noted above, one of the main deterrents to corrosion of the fuel cladding and the canister or metal cask internals during extended dry storage is the presence of helium. If the helium leaks and air is allowed to enter the canister or cask, this, together with the moisture in the air, can result in corrosion of the fuel cladding, the canister, and the cask. However, although provision is made to monitor the pressure of the helium during extended storage in bolted canisters, there is currently no means of confirming the presence of helium in welded containers or casks, nor is there a requirement for periodically inspecting the integrity of the closure welds for defects. If these storage systems were inspected for weld defects and/or tested for helium periodically, this would allow welded containers and casks with leaks to be repaired and refilled with helium.

During extended dry storage, degradation mechanisms also act on the outside of canisters, on storage casks (concrete or steel), and on modular concrete facilities as well as on the storage pads. The effect of these degradation mechanisms will depend on the environmental conditions at the specific location, on diurnal and seasonal temperature variations, and on the presence of corrosive agents and moisture in the air. The review identified references to general metal and concrete deterioration mechanisms and modeling, but none included the information necessary to predict the degradation of dry-storage canisters, casks, or concrete structures during extended storage.

Given the temperature dependence of many of the degradation mechanisms described above, accurately predicting how the used fuel and canister temperatures will change over extended dry storage is important. During this review, however, little information was found on detailed thermal modeling during the period of extended dry storage.

Regardless of the length of storage, used fuel eventually will have to be moved from the reactor sites either to off-site interim storage facilities or to used-fuel processing facilities for recycling or for waste management. Transportation regulations are largely focused on the integrity of the transportation casks, which contain the used fuel, and maintaining subcriticality of the fuel. The primary goal is to ensure that the cask does not fail in the event of a transportation accident, with the potential for release of radioactive materials. The regulations require that under both normal and accident conditions, the transportation cask and its contents are capable of meeting stringent performance specifications that include maintaining geometric configuration of the fuel to certain limits largely for criticality and to address concerns about external radiation levels.

If the fuel degrades during extended storage, it could be susceptible to damage from the vibration and shocks encountered during transport operations. The consequences may include release of fission-product gases into the canister or the cask interior, which must be contained during a transportation accident. Used-fuel transportation casks are designed to withstand a series of transportation accidents without release of radioactive materials. Figure 5 shows a full-scale crash test performed by Sandia National Laboratory in 1977 in which a locomotive traveling at approximately 80 miles per hour was crashed broadside into a used-fuel transportation cask. In this test, the cask and the dummy fuel inside it performed in accordance with the regulatory requirements.

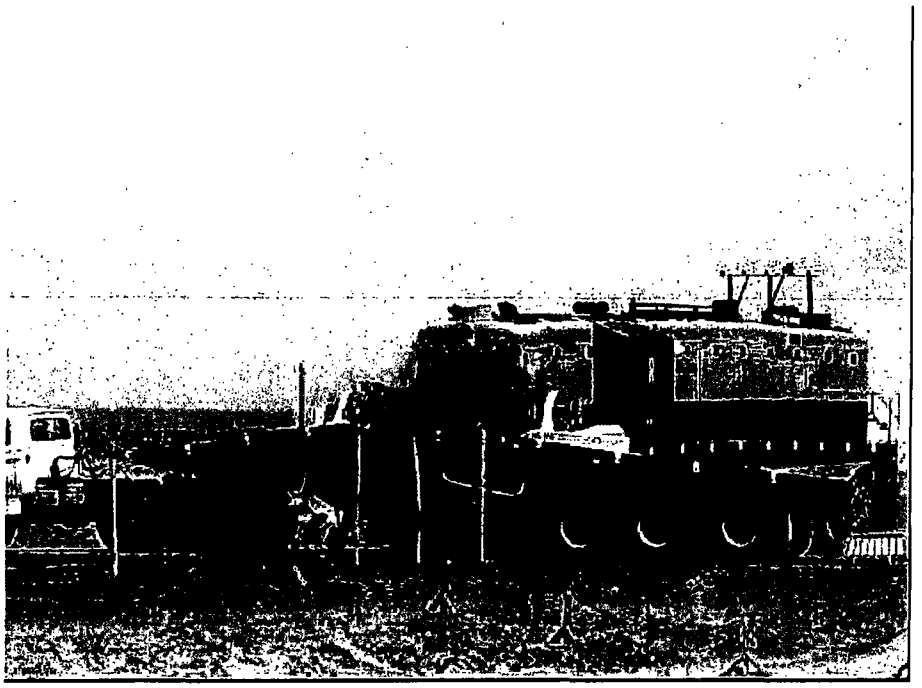

Figure 5. Spent-Fuel Crash Test

http://www.sandia.gov/recordsmgmt/ctb1.html

Upon reaching the interim storage location, the repository site, or other processing facility, the used fuel will have to be handled, and the integrity of the fuel following the transportation and

handling operations may not be known with confidence. If the fuel is to be processed instead of being placed in a repository after transportation, the casks and used-fuel canisters will need to be opened and the fuel removed. Before this is done, consideration should be given to the condition of the fuel, and a means needs to be available for determining whether the fuel has failed, which may require opening the cask in a hot cell as opposed to the more traditional spent-fuel pool. For extended storage, the integrity of the used fuel after transportation cannot be ensured because some long-term degradation processes are uncertain and transportation-accident loading predictions for aged fuels have not been fully validated.

Review of the relevant technical sources used as the basis for this report has shown the following:

- Little data are publicly available on the behavior of high-burnup 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 physical state of the cladding when fuel is placed into dry storage is not currently well characterized. There may be zones of physical weakness and, in some cases, the cladding may be close to failure. Normal handling of fuel assemblies, off-normal occurrences, and accident events would then be more likely to result in additional damage to fuel rods.
- 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.
- At the low temperatures expected to be reached during extended dry storage, and even in the presence of air, used-fuel-pellet material oxidizes at a very slow rate. Even if a gross breach occurs and fuel-pellet material is released from the fuel cladding, it will not oxidize to powder easily or quickly. Consequently, if fuel material is released inside the canister or cask, containing and repackaging it safely once the canister or cask is opened should not present any undue problem. Fission-product gases also would be released inside the canister or the cask, and they would need to be dealt with by the ventilation system in the fuel-handling facility.
- Corrosion mechanisms will cause degradation of the metal components of dry-storage systems during extended dry-storage periods: for example, the outer surfaces of fuel canisters. Consequently, establishing an effective regular inspection and maintenance program is important.
- Also important is establishing a program for inspecting and characterizing the physical condition of used fuel and dry-storage systems in order to understand how their condition changes over time. The program will reduce the uncertainty in predicting the future state and behavior of the used fuel and the storage-system components during subsequent operations.

- Several concrete deterioration and rebar-corrosion mechanisms are known to cause degradation of reinforced concrete in dry-storage systems, including the storage pad. Consequently, establishing a regular inspection and maintenance program for these systems is important.
- Some plausible off-normal and accident scenarios for the handling and transport of used-fuel casks have not been fully evaluated. Performing full-scale testing of transport packages to demonstrate the behavior of both the package and the fuel may be beneficial. At a minimum, validation of computer models using scaled tests should be carried out. However, the performance of some components, such as bolts and welds, are particularly difficult to scale. Consequently, if scaled tests are performed, additional testing of full-scale components may be needed to verify that the performance of these components is being modeled correctly.
- There are security risks associated with the dry storage of used fuel, and the risks will likely change with time. These risks and how they change need to be addressed using a risk-informed process that considers the probability of the risks and the potential consequences. This process then should be used as the basis for determining what action, if any, is needed to provide the necessary level of security during extended dry-storage periods.

Research and Development Recommendations

On the basis of this review, we recommend that a number of research and development programs be implemented. They are focused primarily on improving the understanding of key fuel-degradation mechanisms and increasing confidence in the projection of the behavior of the used fuel and storage systems during extended dry-storage periods and subsequent transportation of the fuel. The intention is to prevent problems that may otherwise be encountered during later fuel-handling operations following transportation of used fuel to disposal or processing facilities. The recommended research programs investigate the following issues:

- Understanding the ultimate mechanical cladding behavior and fuel-cladding degradation mechanisms potentially active during extended dry storage, including those that will act on the materials introduced in the last few years for fabrication of high-burnup fuels
- Understanding and modeling the time-dependent conditions that affect aging and degradation processes, such as temperature profiles, in situ material stresses, quantity of residual water, and quantity of helium gas
- Modeling of age-related degradation of metal canisters, casks, and internal components during extended dry storage
- Inspection and monitoring of fuel and dry-storage systems to verify the actual conditions and degradation behavior over time, including techniques for ensuring the presence of helium cover gas

- Verification of the predicted mechanical performance of fuel after extended dry storage during cask and container handling, normal transportation operations, fuel removal from casks and containers, off-normal occurrences, and accident events
- Design and demonstration of dry-transfer fuel systems for removing fuel from casks and canisters following extended dry storage

Conclusions

The technical information currently available, together with the experience gained to date in the dry storage of spent fuel, demonstrates that used fuel can be safely stored in the short term and then transported for additional storage, processing, or repository disposal without concern. However, additional information is required to demonstrate with similarly high confidence that used fuel can be stored in dry-storage facilities for extended periods without the fuel degrading to the extent that it may not perform satisfactorily during continued storage and subsequent transportation.

However, the Board recommends that a number of research and development programs be implemented to demonstrate that used fuel can be stored safely in dry-storage facilities for extended periods. Research alone will not be sufficient. Because the experience base for extended dry storage of used fuel is short and the credible degradation phenomena are several and not robustly predictable in a quantitative sense, an in-service inspection and maintenance program appears to be the only way of implementing long-term dry storage of used nuclear fuel. The technical details of such an in-service inspection program obviously will depend on the desired safety objectives of extended dry storage. Consequently, a practical engineering approach that is based on the observational method and periodic assessments will likely be required to provide an adequate safety basis in addition to what can be learned from targeted scientific investigations.

The regulations concerning dry storage of used fuel do not currently address storage for extended periods. There also is some inconsistency between the regulations that apply to dry storage and those that apply to transportation, and how to meet both sets of regulations is unclear. It would be helpful in managing extended dry storage of used fuel if the regulations were revised as an integrated set and based on a risk assessment for safety significance and consequence. In addition, the Board thinks that the regulatory requirements related to physical security and terrorist threats also should be reviewed on a risk-informed basis using potential consequence analysis and integrated with the storage and transportation regulations.

At this point, the nuclear waste management policy of the United States is unclear, and the result is that used fuel will be stored at reactor sites for longer than originally foreseen. It is thus essential that the appropriate research and development programs and monitoring and inspection programs are implemented as a matter of priority to demonstrate that used fuel can be stored safely for extended periods and then transported and handled as part of a future waste management program.

A detailed report that is summarized by this white paper is available on the NWTRB Web site at http://www.nwtrb.gov/facts/eds_rpt.pdf.

Nevada Governor Brian Sandoval

Wednesday, December 15, 2010

Sandoval Statement On Judicial Order From The Yucca Mountain Licensing Board

"As Governor-elect, I remain opposed and I will not consider accepting high-level nuclear waste in our state."

RENO, NV -- Governor-elect Brian Sandoval made the following statement today after learning of the judicial order from the Yucca Mountain Licensing Board rejecting the eleven legal questions:

"As Nevada's Attorney General and as a candidate for the highest office in this state, I opposed Yucca Mountain. I made a pledge to do all I could to protect the health, safety and welfare of the citizens of this great state. As Governor-elect, I remain opposed and I will not consider accepting high-level nuclear waste in our state. Period.

"When I visited with President Obama in Washington, D.C. earlier this month, I was pleased and encouraged to hear the president say he would not reconsider his decision to shut down the Yucca Mountain nuclear waste site. Our conversation reaffirmed to me the president will not be supporting the long-term storage of high-level nuclear waste in Nevada.

"I am disappointed by the Licensing's Board order. As the Executive Director of the Nevada Agency for Nuclear Projects has pointed out, the judges made special note of Nevada's scientific claim that erosion could cause the surface of Yucca Mountain to completely erode during the regulatory period as prescribed by the Environmental Protection Agency, leaving the waste unprotected by the mountain's geology in the future. EPA requires that nuclear waste must be kept away from public and environmental exposure for a million years. I will support the state's petition to the Nuclear Regulatory Commission to open a rulemaking docket addressing this erosion science that was not previously available when the NRC addressed the issue.

"Due to the investment in infrastructure at Yucca Mountain, I am willing to consider Yucca Mountain for research or other non-nuclear purposes that might benefit economic development efforts. As Governor, I will not give up my fight against storing high-level nuclear waste at Yucca Mountain. Protecting the health, safety and welfare of our fellow citizens will be my highest priority."

###

Mary-Sarah Kinner, Press Secretary - (775) 684-5667 Cell (775) 443-7530
Email: mskinner@gov.nv.gov

JIM GIBBONS
Governor

STATE OF NEVADA

BRUCE BRESLOW
Executive Director

OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS
1761 E. College Parkway, Suite 118
Carson City, Nevada 89706
Telephone: (775) 687-3744 • Fax: (775) 687-5277
E-mail: nwpo@nuc.state.nv.us

December 16, 2010

The State of Nevada remains committed to protect the health, safety and welfare of its citizens which have been threatened for the past 23 years by the seriously flawed high level nuclear waste repository project proposed at Yucca Mountain. While we are encouraged by the commitment of the Obama administration to kill the ill-advised project, we remain steadfast in our opposition to the Department of Energy's License Application.

While DOE has filed a motion to withdraw its license, the process has been kept alive by the federal licensing board which opined that DOE did not have the legal right to withdraw its application. Both DOE and the State have challenged that ruling to the full Nuclear Regulatory Commission. In addition, other parties including the States of South Carolina and Washington, are suing in federal appeals court to make sure their states get to dump their nuclear waste in Nevada. Nevada will not receive any compensation in exchange for hosting this high risk project.

Nevada's legal team attempted to shorten the long 4-year licensing hearing with eleven legal challenges that could have stopped the project. Nevada challenged that the project was illegal because DOE's application is incomplete, did not include models showing what would happen if safety barriers failed, and depended on the safety of 11,500 titanium robot-installed drip shields that DOE does not plan to install until after the waste is emplaced in the mountain for approximately 100 years.

Today, the licensing board ruled against most of Nevada's legal challenges forcing the long drawn-out hearing to continue and kicking the safety issues down the road. However, the judges did allow Nevada to challenge the facts of each of these safety issues during the licensing hearing. In addition, the judges made special note of Nevada's scientific claim that erosion could cause the surface of Yucca Mountain to completely erode during the period prescribed by the Environmental Protection Agency, leaving the waste unprotected by the mountain's geology in the future. EPA requires that nuclear waste must be kept away from public and environmental exposure for a million

years. The State will petition the Nuclear Regulatory Commission to open a rulemaking docket addressing this erosion science that was not previously available when the NRC addressed the issue.

While the license application remains alive in the courts, Nevada believes the final matter will be decided by both the courts and the US Congress. We will continue to work with the President's Blue Ribbon Commission for America's Nuclear Future while it works on alternatives and sets a new path toward solving the nation's nuclear waste issues. The Commissions first draft report is due next summer.

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December 22, 2010

The Honorable John M. Spratt, Jr.
Chairman, Committee on the Budget
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of October 11, 2010, in which you expressed concern about the agency's high-level waste program execution during the period of the Continuing Resolution. I appreciate your interest in this issue.

I want to assure you that the approach the U.S. Nuclear Regulatory Commission (NRC) is taking is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year (FY) 2011 budget guidance, the general principles of appropriations law, and past NRC practice. When the NRC is operating under a Continuing Resolution, the Executive Director of Operations and the Chief Financial Officer issue guidance to staff on activities to be carried out until a full year appropriation is approved. Therefore this year's guidance issued on October 4, 2010, was consistent with the agency's FY 2011 budget that was approved by the Commission and provided to the Congress by the President in February.

Under the FY 2011 guidance, therefore, the staff is beginning to transition to an orderly close-out of the high-level waste program. This action was taken only after discussions with the Commission and senior staff, and after the NRC General Counsel reviewed the budget guidance and determined that the agency's approach was consistent with appropriations law. To provide you with further assurances about the specific actions we have taken, orderly closure of this program entails knowledge capture and management to ensure that the staff's technical work to date is preserved. This comprehensive effort is expected to take about a year and include documenting the staff's review and other knowledge concerning the program by means such as comprehensive technical reports and videotaped interviews of technical staff. By thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be able to respond to direction from the Congress or the Courts.

I appreciate your interest in our Nation's high-level waste program.

Sincerely,

/RA/

Gregory B. Jaczko

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

CHAIRMAN

December 22, 2010

The Honorable Michael K. Simpson
Member, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Simpson:

This letter is in response to your letter of October 20, 2010, in which you expressed concern about the agency's high-level waste program execution during the period of the Continuing Resolution. I appreciate your interest in this issue and respect the important constitutional role the U.S. House of Representative's Committee on Appropriations has in providing funding and oversight.

I want to assure you that the approach the U.S. Nuclear Regulatory Commission (NRC) is taking is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year (FY) 2011 budget guidance, the general principles of appropriations law, and past NRC practice. When the NRC is operating under a Continuing Resolution, the Executive Director of Operations and the Chief Financial Officer issue guidance to staff on activities to be carried out until a full year appropriation is approved. Therefore this year's guidance issued on October 4, 2010, was consistent with the agency's FY 2011 budget that was approved by the Commission and provided to the Congress by the President in February.

Neither the text of the FY 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the FY 2011 Continuing Resolution provide the Commission with direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. Rather, the President's budget requests $10 million for the closeout of the high-level waste program. In the absence of direction from Congress and with the context outlined above, the agency was left to decide on the most appropriate path forward within the framework of the law and based on adherence to established Commission policy.

Under the FY 2011 guidance, therefore, the staff is beginning to transition to an orderly close-out of the high-level waste program. This action was taken only after discussions with the Commission and senior staff, and after the NRC General Counsel reviewed the budget guidance and determined that the agency's approach was consistent with appropriations law. To provide you with further assurances about the specific actions we have taken, orderly closure of this program entails knowledge capture and management to ensure that the staff's technical work to date is preserved. This comprehensive effort is expected to take about a

year and include documenting the staff's review and other knowledge concerning the program by means such as comprehensive technical reports and videotaped interviews of technical staff. By thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be able to respond to direction from the Congress or the Courts.

Thank you again for your correspondence. I would be happy to discuss this matter further with you or your staff and I will continue to keep you informed of NRC activities related to the high-level waste program.

Sincerely,

Gregory B. Jaczko