

Non-Concurrence Process Record for NCP-2011-013

The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all employees to promptly raise concerns and differing views without fear of reprisal and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission.

Individuals are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis. If informal discussions do not resolve concerns, individuals have various mechanisms for expressing and having their concerns and differing views heard and considered by management.

Management Directive MD 10.158, "NRC Non-Concurrence Process," describes the Non-Concurrence Process (NCP). <http://pbadupws.nrc.gov/docs/ML0706/ML070660506.pdf>

The NCP allows employees to document their differing views and concerns early in the decision-making process, have them responded to, and attach them to proposed documents moving through the management approval chain.

NRC Form 757, Non-Concurrence Process is used to document the process.

Section A of the form includes the personal opinions, views, and concerns of an NRC employee.

Section B of the form includes the personal opinions and views of the NRC employee's immediate supervisor.

Section C of the form includes the agency's evaluation of the concerns and the agency's final position and outcome.

NOTE: Content in Sections A and B reflects personal opinions and views and does not represent official factual representation of the issues, nor official rationale for the agency decision. Section C includes the agency's official position on the facts, issues, and rationale for the final decision.

The agency's official position (i.e., the document that was the subject of the non-concurrence) is included in ADAMS Accession Number ML11180A265.

This record has been redacted prior to discretionary release to the public.

NON-CONCURRENCE PROCESS

SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL

TITLE OF DOCUMENT UPDATE ON THE YUCCA MOUNTAIN PROGRAM	ADAMS ACCESSION NO. ML11180A265
DOCUMENT SPONSOR Catherine Haney	SPONSOR PHONE NO. 301-492-3554
NAME OF NON-CONCURRING INDIVIDUAL King Stablein	PHONE NO. 301-492-3199

DOCUMENT AUTHOR DOCUMENT CONTRIBUTOR DOCUMENT REVIEWER ON CONCURRENCE

TITLE Branch Chief	ORGANIZATION NMSS/HLWRS
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REASONS FOR NON-CONCURRENCE
Please see attached document.

CONTINUED IN SECTION D

SIGNATURE <i>King Stablein</i>	DATE 07/21/2011
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SUBMIT FORM TO DOCUMENT SPONSOR AND COPY TO YOUR IMMEDIATE SUPERVISOR AND DIFFERING VIEWS PROGRAM MANAGER

Reasons for King Stablein's Non-Concurrence on Memorandum to the Commission entitled
"Update on the Yucca Mountain Program"
July 21, 2011

As the author of this memorandum, I have striven to provide the Commission with substantial information on, and appropriate context for, the important developments which have taken place in the Yucca Mountain Program since February 4, 2011, the date of the last such memorandum to the Commission. However, some of the most important, and most revealing, matters to have occurred in the last six months are almost imperceptible in the memorandum in its final form.

In particular, I refer to the discussion of the status of Technical Evaluation Reports (TERs). The staff completed the Postclosure TER volume on March 31, 2011, with an NLO from OGC, and was prepared to make it public upon approval by Catherine Haney, the NMSS Office Director. For over two months, the staff awaited action by her but received no feedback and no explanation as to why she was delaying issuance of the Postclosure TER volume. After over two months of silence, the Director informed Aby Mohseni, the acting Director of HLWRS, that she did not approve the document, as written, for publication, and provided direction on how she wanted the document modified. Mr. Mohseni responded by disagreeing with her decision in writing and asking either that she give permission for the Postclosure TER volume to be published immediately without changes or that the matter be referred to the Commission.

Ms. Haney did not pursue either course of action, so Mr. Mohseni felt compelled to take the highly unusual and very courageous step of writing a memorandum directly to the Commission on June 20, 2011, "to describe the environment in which the Division of High Level Waste Repository Safety (HLWRS) is working and to request Commission intervention." Among the interventions that Mr. Mohseni requested was for the Commission to determine the appropriateness of issuing the Postclosure TER volume. Other requested interventions were aimed primarily at assuring that the Commission had sufficient avenues to be fully and currently informed on the status of, and policy matters related to, the Yucca Mountain Program and that staff had the opportunity to complete its Yucca Mountain-related knowledge capture activities.

NMSS management took notice of Mr. Mohseni's memorandum and formulated a six-step Staff Action Plan. The first step was for HLWRS to make the changes directed by the NMSS Office Director to the Postclosure TER volume and to issue it promptly. Obviously, this direction runs counter to Mr. Mohseni's request to issue the document in an unaltered form. However, staff completed the changes as directed and made the Postclosure TER volume publicly available earlier today (July 21, 2011).

In the memorandum that is the subject of this non-concurrence, the discussion of the status of TERs contains virtually none of the above information and context. Buried near the end of the memorandum is a very short section entitled "Action Plan for Responding to Concerns Raised by NMSS Staff Members", which does not describe the staff concerns in Mr. Mohseni's memorandum but refers to them cryptically as "certain matters related to the Yucca Mountain

Program.” The reader has no clue from this phrase that the concerns relate to the problems staff have encountered in trying to publish the staff version of the Postclosure TER volume and to the issues of “suppression and manipulation of programmatic and budgetary information to meet a politicized agenda, depriving the full Commission of the broad range of information, including programmatic options, needed by the Commission to fully discharge its responsibilities” (Mohseni memorandum to the Commission, June 20, 2011). Thus, the memo that is the subject of this non-concurrence serves as yet another glaring example of how information that is essential for the Commission to understand what is really happening in the Yucca Mountain Program—to the staff, to its products, and to its environment—is concealed or omitted in a document purporting to present the status of the Yucca Mountain Program to the Commission.

For these reasons, I respectfully decline to concur on this status update memorandum.

King Stablein 7/21/2011

King Stablein, Chief
Projects Management Branch B
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT UPDATE ON THE YUCCA MOUNTAIN PROGRAM	ADAMS ACCESSION NO. ML11180A265
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**SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)**

NAME
Aby Mohseni

TITLE Acting Division Director	PHONE NO. 301-492-3181
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ORGANIZATION
HLWRS/NMSS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

- I HAVE NO COMMENTS
- I HAVE THE FOLLOWING COMMENTS

See attachment.

CONTINUED IN SECTION D

SIGNATURE 

DATE
07/21/2011

SUBMIT THIS PAGE TO DOCUMENT SPONSOR

As Dr. Stablein's supervisor, I observe daily the subtle and not-so subtle pressures and intimidation he and his organization is subjected to. I have brought a few examples to the attention of the EDO and other senior managers to no avail. I have previously informed the Commission of manipulation and suppression of information regarding the Yucca Mountain Program. I informed the Commission of the politicization of our scientific products and licensing processes. While the OIG report shed some light on these issues at the highest level, it did not go far enough to capture the unhealthy impacts on the staff. Dr. Stablein's basis for his non-concurrence reflects yet another example of the same senior management attitude obsessed with controlling information that gets to the full Commission.

My comments would be incomplete without mentioning how well the staff has managed to stay focused on its mission despite the unbecoming behavior of senior management. The recent publication of the TER on Postclosure, albeit altered by direction from senior management, is an example. A few of the contributing staff were Tim McCartin, Chris Jacobs, Alicia Mullins, Jack Sulima. The Center for Nuclear Waste Regulatory Analyses provided critical support. Dr. Stablein, his staff, and the entire Division should be commended for their courage, professionalism, hard work, dedication, focus on the mission, scientific acumen, resilience, creativity to overcome obstacles, and adherence to our organizational values. They are truly the best assets of this Agency and for the country. I wish I could say the same for some of the senior managers who have posters of such values on the walls.

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT Update on the Yucca Mountain Program	ADAMS ACCESSION NO. ML11180A265
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SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME
Catherine Haney

TITLE Office Director	PHONE NO. 301-492-3554
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ORGANIZATION
NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

- see attached -

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR <i>Catherine Haney</i>	DATE <i>8-3-11</i>	SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>	DATE <i>8-3-11</i>
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NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

- | | |
|---|---|
| <input type="checkbox"/> CONCURS | <input checked="" type="checkbox"/> WANTS NCP FORM PUBLIC |
| <input checked="" type="checkbox"/> NON-CONCURS | <input type="checkbox"/> WANTS NCP FORM NON-PUBLIC |
| <input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process) | |

I have reviewed Dr. Stablein's written reasons for non-concurring on this memorandum and also met with him on July 21, 2011 to discuss his non-concurrence.

Dr. Stablein's primary concern, as I understand it, is that "some of the most important, and most revealing, matters to have occurred in the last six months are almost imperceptible in the memorandum in its final form." He wants to include a detailed discussion on the timing and development of my position with regards to the issuance of the Post Closure Technical Evaluation Report (TER) and to highlight Mr. Mohseni's June 20, 2011, memorandum to the Commission. He states that this information is needed for the Commission to understand the present status, products and environment of the Yucca Mountain Program.

I believe the current memorandum adequately describes the activities that have taken place in the Yucca Mountain Program since February 2011 and that no revisions to the final memorandum are needed. The Commission is also well aware of my direction with regards to the Postclosure TER as this matter is discussed in detail in Mr. Mohseni's memorandum to the Commission, "Request for Commission Intervention," dated June 20, 2011 (ML111940243). In addition, my position was discussed in my prepared testimony for the House Subcommittee on Environment and the Economy, in responses to questioning by the Subcommittee members and in a letter from Representatives, John Shimkus and Fred Upton to Chairman Jaczko dated, July 8, 2011. Therefore, I believe the Commission is well informed on this matter.