

NRC FORM 787 MAY 2010 (10-100) (2-8882)		U.S. NUCLEAR REGULATORY COMMISSION	
<b>NON-CONCURRENCE PROCESS</b>			
<b>SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL</b>			
TITLE OF DOCUMENT <b>Update on the Yucca Mountain Program</b>		ADAMS accession NO. ML103140371	
DOCUMENT SPONSOR <b>Carrollan Henry</b>		SPONSOR PHONE NO. 301-492-3854	
NAME OF NON-CONCURRING INDIVIDUAL <b>Janet F. Kotra</b>		PHONE NO. 301-492-3190	
<input checked="" type="checkbox"/> DOCUMENT AUTHOR		<input type="checkbox"/> DOCUMENT CONTRIBUTOR	
<input type="checkbox"/> DOCUMENT REVIEWER		<input checked="" type="checkbox"/> ON CONCURRENCE	
TITLE <b>Senior Project Manager</b>		ORGANIZATION NRC/DOE/EP/MS	
<p>REASONS FOR NON-CONCURRENCE</p> <p>I have prepared and revised captioned variations of this memorandum. When, on June 14, 2010, the Chairman ordered the Director of NRCSS to postpone issuance of Safety Evaluation Report Volumes 1 and 3, HLWRS and NRCSS managers became concerned the entire Commission may not be fully aware of the policy, legal and budgetary consequences of such redirection. Some believed that a diligent staff, struggling to honor conflicting obligations, needed programmatic and policy guidance from the entire Commission agreed with a fair assessment of the facts. I was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed. Later, in September, it became clear that, rather than postpone issuance of individual SER volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman, through OEDO and the CPO, told staff that all work on the SER must stop, including Volume 3 on post closure safety, which was already complete, and undergoing management review. Written guidance to this effect appeared later, in an October 4, 2010 memorandum. The Chairman later met with the Yucca Mountain Team on October 12, 2010. He explained that the decision to shut down the staff's review of the application was his alone and that staff should move to orderly closure of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and the Commission has yet to issue a decision on whether DOE may legally withdraw the application. Over time, repeated rounds of comment (internal and otherwise) from OEDO, the CPO and the General Counsel were incorporated. Time and again these comments diluted or contradicted the direct language offered by NRCSS and AELSP staff. Both staff sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down a complex and valuable national program and infrastructure while still supporting an ongoing hearing process. This new long-suffering memorandum is characterized as a "status report." Throughout its tortured evolution, I continued to make countless changes during a most unorthodox process, despite growing reservations, so long as the description of the program's history and status remained reasonably accurate. At this juncture, I can no longer support this memorandum. I believe</p>			
SIGNATURE <i>Janet Helen Kotra</i>		DATE 2/11/2011	
<small>REG-787 (10-100)</small> <small>Use ADAMS Template NRC-888</small>		<small>FORM NRC-888 (10-100)</small>	

ENCLOSURE 3

**NON-CONCURRENCE PROCESS**

**FILE OF DOCUMENT**

ADAMS ACCESSION NO.  
ML109146901

Update on the Yucca Mountain Program

**SECTION OR CONTINUATION PAGE**

**CONTINUATION OF SECTION**

A     B     C

that, in its present form, this memorandum appears to imply that the NRC staff voluntarily, or, worse still, on its own  
 volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's  
 support for a full and impartial hearing process for that application. It has been my experience that members of the NRC  
 staff, who have conducted a fair, independent and technically sound safety review, and who worked earnestly to prepare the  
 required Safety Evaluation Report, stood down from that duty only with enormous reluctance. As currently drafted, this  
 memorandum makes no reference to the facts surrounding the Chairman's termination of the NRC staff's review of the  
 Yucca Mountain License application. About this crucial content, a reader is left with the mistaken impression that the  
 termination and the "arbitrary shutdown" of the NRC staff's licensing review and hearing process was staff's preferred and  
 well-considered course of action, influenced by the NRC's technical staff. Nothing lay could be further from the truth.  
 Furthermore, absent proper context, the reader would also conclude that NRC staff prepared this memorandum to inform a  
 particular Commission about "staff's" course of action, after the fact, to alert the otherwise uninvolved Commission about  
 problems and difficulties to which "staff's" course have led. For these reasons, I must respectfully withdraw my  
 concurrence of December 2, 2010.

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT: Update on the Yucca Mountain Program ADAMS ACCESSION NO.: NL103140391

SECTION II - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR  
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)

NAME: Kevin Stablein

TITLE: Chief, Projects Branch B, Division of High-level Regulatory Safety PHONE NO.: 301-492-3199

ORGANIZATION: NMSS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

- I HAVE NO COMMENTS
- I HAVE THE FOLLOWING COMMENTS

*I agree wholeheartedly with Dr. Kotra's comments and agree specifically that this status report lacks the necessary context and information to adequately characterize the confusion, chaos, and anguish occasioned by the Chairman's unilateral decision to disrupt the orderly process of SER development. My nonconcurrency comments will amplify some of the points made by Dr. Kotra.*

CONTINUED IN SECTION D

SIGNATURE: Kevin Stablein

DATE: 2/2/11

### NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT  
**Update on the Yucca Mountain Program**

ADAMS ACCESSION NO.  
**ML103140391**

**SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR**

NAME  
**Catherine Haney**

TITLE  
**Office Director**

PHONE NO.  
**301-492-3554**

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>2-4-11</i>	SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>	DATE <i>2-11</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 type="checkbox"/> WANTS NCP FORM PUBLIC                |
| <input checked="" type="checkbox"/> NON-CONCURS                                 | <input checked="" type="checkbox"/> WANTS NCP FORM NON-PUBLIC |
| <input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process) |   |

### NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT  
**Updated on the Yucca Mountain Program**

ADAMS ACCESSION NO.  
**ML110540412**

**SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR**

NAME  
**Catherine Haney**

TITLE  
**Office Director**

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**301-492-3554**

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.)

Section C revised on March 01, 2011, to reflect that the non-concurring individual would like the NCP Form to be made public and that he/she non concurs on the document.

See Attached

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR <i>Catherine Haney</i>	DATE <b>3-1-11</b>	SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>	DATE <b>3-1-11</b>
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NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

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