

**NON-CONCURRENCE PROCESS**

**SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL**

TITLE OF DOCUMENT <b>UPDATE ON THE YUCCA MOUNTAIN PROGRAM</b>	ADAMS ACCESSION NO. <b>NEL103140391</b>
DOCUMENT SPONSOR <b>Catherine Hasey</b>	SPONSOR PHONE NO. <b>301-492-3554</b>
NAME OF NON-CONCURRING INDIVIDUAL <b>King Stables</b>	PHONE NO. <b>301-492-3199</b>

DOCUMENT AUTHOR     DOCUMENT CONTRIBUTOR     DOCUMENT REVIEWER     ON CONCURRENCE

TITLE <b>Branch Chief</b>	ORGANIZATION <b>NMSS/ELWRS</b>
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REASONS FOR NON-CONCURRENCE  
**Please see attached document.**

CONTINUED IN SECTION D

SIGNATURE <i>King Stables</i>	DATE <b>2/2/11</b>
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**Reasons for King Stabile's Nonconurrence on Memorandum to the Commission entitled  
"Update on the Yucca Mountain Project"**

As Dr. Kotra's direct supervisor, I have witnessed her efforts to prepare and revise this memorandum over the past few months, and we have engaged in continual discussions about whether or not we could support the contents as they belated and turned to accommodate the many agendas that were influencing the direction of the memo. We grew more and more uncomfortable as we came to understand that neither the context for the current state of the Yucca Mountain program nor the policy issues affecting the program were intended to be part of the final product. I have come to conclude that the memo does not provide the Commission with important information regarding the program, but rather, appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011. In her non-concurrence, Dr. Kotra has skillfully illuminated many fundamental issues with the memo, and I fully support what she has written. In addition, I want to add some thoughts of my own.

Until the Chairman unilaterally brought development of the SER to a halt as of September 30, 2010, the High-Level Waste Repository Safety (HLWRS) staff was on track to deliver all five volumes of the SER in the first part of FY 2011. Volume 3, the key postclosure volume, was virtually complete and could have been issued by the November 2010 date that staff had given to ASLB. When the Chairman met with the HLWRS staff on October 12, 2010, it was pointed out to him that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear during this meeting that, although he recognized that he could choose that path, his view was that it would look more political to publish the SER volumes with findings than to issue them as Technical Evaluation Reports (TERs). Despite his audience's incredulity regarding this position, the Chairman said that the decision was solely his and that he chose to derail the SER development process while directing the staff to begin orderly shutdown of the Yucca Mountain program.

This decision has had profound effects on the Yucca Mountain program, none of which are reflected in the subject status report. As a supervisor in this program, I am keenly aware of the agony experienced by the HLWRS staff as they dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To not be allowed to finish the SER, the culmination of those years of prelicensing and licensing activity, because of what appears to be the arbitrary decision of one person, was wrenching for the staff. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a program that has existed for 30 years. It felt to the staff as if the Chairman had casually dismissed the staff's sacrifices and effort of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled. The staff would

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have greatly appreciated, given the importance of this decision, an opportunity to share its views with the entire Commission. There is no recognition in this status update of the staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made.

There is also no recognition in this memorandum of the difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application. The staff has been caught in a bind which it felt itself incapable of escaping as it attempts to follow the Chairman's direction to carry out orderly closure of the program. Confronted with the reality that there is still an active application before ASLB, certain activities in the staff's Orderly Closure Plan were considered by staff to require that the Commission allow DOE to withdraw its application before staff could carry out those activities. One example is the disposition in the National Archives of the documents that have been needed during the licensing process. The staff, many of whom have been in this program for 20 years or more, are acutely aware of the NWPA and the argument that ASLB crafted in rejecting DOE's request to withdraw its application. Staff should not be put in a situation where the direction from the Chairman appears to be in direct conflict with the NWPA and the fact of an active license application. Absent policy decisions from the Commission, staff has struggled on a daily basis to figure out how to cope with this bizarre situation in a manner which would enable staff to maintain its integrity.

For these reasons, as well as those expressed so eloquently by Dr. Kotra in her nonconurrence, I respectfully decline to concur on this status update memo.

*King Stabile* 2/3/11

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

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I carefully considered the concerns raised in Dr. Kotra's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Over the last several months, I have met with Dr. Kotra to discuss her concerns on transitioning the Yucca Mountain Program towards closure. Most recently, I met with Dr. Kotra on January 31, 2011, to discuss the concerns she planned to raise with the most recent version of the memorandum. Based on these discussions and my review of her non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Kotra notes in her opening statement that she has "prepared and revised copious variation of this memorandum". She also states that "over time, the memo has been revised to dilute or contradict "the direct language offered by NMSS and ASLBP staffs. Both staffs sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down and complex and valuable national program and infrastructure while still supporting an ongoing hearing process." Dr. Kotra states that "In its present form, this memorandum appears to imply that the NMSS 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 the application. . . . 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."

Dr. Kotra is correct in her statement that there have been many iterations of this memorandum. This was due to the evolving nature of the program and the information that I felt needed to be conveyed to the Commission. Dr. Kotra states that she "was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed." Over time, the purpose of the paper evolved. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. Potential policy issues associated with the closure of the Yucca Mountain project had been decided at the Commission level (reference my response to Mr. Mohseni's non concurrence on this same memo). I am not aware of any new information regarding program closure that would warrant raising it as a policy matter in this memorandum nor did I believe it necessary to raise any facts surrounding the termination of staff's review in this status paper.

Lastly, I do not agree with Dr. Kotra's statement that the "memorandum appears to imply that the NMSS 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 the application. The memorandum was not intended to document or revisit past decisions on the Project.

*Catherine Haney*  
2-3-11

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT	ADAMS ACCESSION NO.
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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 Mohamed	PHONE NO. 301-492-3181
TITLE Deputy Director	
ORGANIZATION NRC/NRES/DEL/WRS	

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

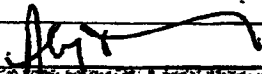
I HAVE NO COMMENTS

I HAVE THE FOLLOWING COMMENTS

As Dr. King Stahlein's supervisor, I agree with his characterization of the program and the shortcomings of the memorandum. I would furthermore point to the inconsistency of the NRC Solicitor's characterization of the status of the program as being suspended due to the Continuing Resolution, implying a temporary and reversible status. In an email to a staff inquiry, the Solicitor agreed with the following characterization:

"In December 2010, the U.S. Court of Appeals lifted a prior order that had held four lawsuits against DOE in abeyance. The Court's December order set the lawsuits for full briefing and for oral argument. All briefs now have been filed, and the Court is scheduled to hear oral argument on March 22, 2011. The lawsuits against DOE claim that DOE has no authority to withdraw the Yucca Mountain license application, and that Congress must specifically authorize such action. As the appeals court proceeding has moved forward, and in view of NRC's limited budget resources under the current Continuing Resolution, NRC has suspended review of the Yucca Mountain license application, and NRC has stated it has no schedule for completion of the review."

This statement is inconsistent with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas Hearing Facility in FY 2011.

SIGNATURE 	<input type="checkbox"/> CONTINUED IN SECTION D
DATE 2/3/2011	

### NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT: Update on the Yucca Mountain Program  
ADAMS ACCESSION NO.: ML103148391

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

NAME: Catherine Haasy

TITLE: Office Director  
PHONE NO.: 301-492-3554

ORGANIZATION: NRCSS

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 Haasy</i>	DATE 2-4-11	SIGNATURE - DOCUMENT SIGNER <i>Catherine Haasy</i>	DATE 2-4-11
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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 Hancy**

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.)

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

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|---|---|
| <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 carefully considered the concerns raised in Dr. Stablein's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." On February 2, 2011, prior to him filing the non concurrence, I met with Dr. Stablein to discuss his concerns with the memorandum. Based on this discussion and my review of his non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Stablein notes several items that are omitted from or not recognized in the memorandum. They are as follow:

- Important information regarding the program
- The "profound effects" of the decision to transition the Yucca Mountain Program to closure are reflected in the subject status report.
- ". . . staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made."
- ". . . difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application.

Dr. Stablein further states that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011."

Mr. Mohseni, Dr. Stablein's supervisor, in his comments on Dr. Stablein's non concurrence states that he agrees with Dr. Stablein's characterization of the program and the shortcomings of the memorandum. In addition, Mr. Mohseni identifies perceived inconsistency with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas hearing Facility in FY 2011 and comments by the NRC Solicitor on a draft IAEA document that imply a temporary and reversible status (reference Mr. Mohseni's comments on Dr. Stablein's non concurrence).

I have reviewed the list of items that Dr. Stablein believes were omitted from or not recognized in the memorandum and his statement that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011." I believe that they all fall outside of the scope of the memorandum or are not needed. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities.

I have also been informed by the NRC Solicitor that his comments on an interim draft of an IAEA document were not meant to suggest a temporary "suspension" of YM due to budget constraints. The term was drafted by others and his focus was on accurately characterizing the status of Federal court litigation. He understands that the staff is engaged in orderly closure activities. As directed, our FY 2011 activities are focused on the orderly closure of the Program and not on completion of the Safety Evaluation Reports. As stated by the Chairman in



an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML 102980673), "the approach the NRC is following is consistent with the terms and the Continuing Resolution, the Commission's Fiscal 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice." The approach described in the memorandum is endorsed by the OEDO, CFO, and OGC and the memorandum describes the resource limitations on completing activities in FY2011.

*Catherine Haney*  
2-3-11