

December 20, 2012

Dr. Jacob D. Paz
5440 Count Carlson Circle
Las Vegas, NV 89119

Dear Dr. Paz:

We are responding to your letter of November 14, 2012, to Dr. Allison Macfarlane, Chairman of the U.S. Nuclear Regulatory Commission (NRC). You reiterate aspects of the U.S. Department of Energy's (DOE's) application to construct a geologic repository at Yucca Mountain, Nevada, that you find problematic, specifically your concerns related to potential chemical hazards related to the Yucca Mountain site. Finally, you ask whether the June 8, 2012 ruling by U.S. Court of Appeals for the District of Columbia Circuit that vacated and remanded the NRC's Waste Confidence rule applies to the Yucca Mountain license application, and whether that ruling means that the NRC must consider Yucca Mountain possibly becoming a Superfund site.

NRC does not have the statutory authority to regulate chemical hazards. Also, the U.S. Congress gave authority for establishing public health, safety and environmental standards for the proposed repository at Yucca Mountain to the U.S. Environmental Protection Agency (EPA). Contact information for the EPA is available at www.epa.gov.

The Court of Appeals decision in *NY v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), does not apply to the Yucca Mountain license application. As the NRC has stated in the past, Waste Confidence does not assume the availability of any specific repository; the 2010 decision and rule assume that Yucca Mountain would not be built. See e.g., 75 Fed. Reg. 81040; December 23, 2010.

Waste Confidence is the NRC's generic finding that spent nuclear fuel can continue to be safely stored beyond the licensed life for operation of a reactor without significant environmental impacts and that sufficient repository capacity would be available when necessary. In vacating and remanding the NRC's 2010 Waste Confidence rule, the Appeals Court ruled that, among other things, the NRC should have considered the potential environmental effects related to long term storage in the event a permanent spent fuel repository is never built. The Court also found other deficiencies with the agency's treatment of spent fuel pool leaks and fires. As noted above, the Court's ruling applies only to the remanded Waste Confidence decision and rule; the Yucca Mountain application would still require a separate and site-specific evaluation of environmental impacts.

Dr. J. Paz

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In response to the Court's ruling, the NRC is developing a generic environmental impact statement (EIS) to support a revision to the Waste Confidence decision and rule. The agency is currently conducting a scoping process to help in the development of that EIS.

I trust that this information is useful to you. We appreciate your interest in the NRC's regulatory programs.

Sincerely,

/RA/

Lawrence E. Kokajko, Director
Division of Spent Fuel Alternative Strategies
Office of Nuclear Material Safety
and Safeguards

Dr. J. Paz

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