

Response to Questions
Senators Shelley Moore Capito and Sheldon Whitehouse
Letter of March 19, 2018

- 1. Is the NRC authorized under the Nuclear Waste Policy Act, Atomic Energy Act, and/or any applicable NRC regulations to accept from a private entity an application for a license for the permanent disposal of spent nuclear fuel and high-level radioactive waste?**

The NRC is not authorized to license any entity other than the Department of Energy (DOE) to permanently dispose of spent nuclear fuel and high-level radioactive waste.

The Nuclear Waste Policy Act of 1982 (NWPA) (P.L. 97-425, 42 U.S.C. §§ 10101–10270) established comprehensive and exclusive procedures for siting, constructing, and operating a permanent federal repository for the disposal of high-level radioactive waste and spent nuclear fuel. Section 111(b) (42 U.S.C. § 10131(b)) states that a purpose of the NWPA is to establish the federal government's responsibility—not a private entity's responsibility—for disposing of high-level radioactive waste and spent nuclear fuel. Pursuant to Section 8(c) (42 U.S.C. § 10107(c)), the provisions of the NWPA are applicable to any repository containing civilian generated high-level radioactive waste or spent nuclear fuel.

In Subtitle A of the NWPA, Congress designated the DOE as the body solely responsible for submitting an application for constructing and operating a high-level radioactive waste repository. Specifically, Section 114(b) (42 U.S.C. § 10134(b)) directs the Secretary of Energy to submit to the NRC an application for a construction authorization for a repository. Section 114(d) (42 U.S.C. §10134(d)), in turn, directs the NRC to consider such an application and issue a final decision approving or disapproving the issuance of a construction authorization. No other mechanism for the licensing of a repository is contemplated.

- 2. If the answer to the above question is no, is the NRC authorized to accept such an application if the private entity applicant is a Department of Energy contractor?**

Regardless of whether a private entity is a DOE contractor, the NRC may not license that entity to permanently dispose of spent nuclear fuel or high-level radioactive waste for the reasons stated above. DOE may, however, enter into a contract with a private entity to prepare, or to support preparation of, such an application on behalf of DOE, and the existence of such a contract would not affect the NRC's authority.