

QUARTERLY PROGRESS REPORT TO CONGRESS
U.S. DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
October 1 – December 31, 2007

Introduction

In testimony on July 19, 2006, the Director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) committed to provide quarterly progress reports to the House Energy and Air Quality Subcommittee. This is the sixth quarterly report to Congress. The purpose of this report is to:

- Review major accomplishments of the last quarter
- Identify key ongoing activities
- Highlight significant challenges

The OCRWM appropriation enacted in December 2007 of \$386.4 million for FY 2008 was \$108.1 million less than the Administration's request of \$494.5 million. This significant reduction has caused DOE to reassess its activities and spending plans for FY 2008. It appears that the June 30, 2008, schedule date for submission of the license application to the Nuclear Regulatory Commission (NRC) will still be achievable. DOE has evaluated the budget impact and expects the reduction will result in up to 900 people being removed from the Program by the end of FY 2008. Activities at the Yucca Mountain site have also been closed down. The start of the construction of the Nevada rail line will also be delayed at least two years, and the best achievable date for receipt of waste at the repository in 2017 is no longer feasible. Without a dependable funding stream, a firm date for repository opening cannot be set. DOE will continue to assess the impacts of this reduction in funding and keep Congress informed.

Major Accomplishments

Licensing Support Network – The Licensing Support Network (LSN) is a web-based information system established by the NRC that allows the public to review documentary materials relating to DOE's license application. In October 2007, DOE certified its collection of over 3.5 million documents it had placed on the LSN, and the State of Nevada subsequently challenged that certification before NRC's Pre-Licensing Application Presiding Officer Board. The Board denied the State of Nevada's motion and upheld DOE's LSN certification. The State appealed the Board's decision to the full NRC, and the appeal is pending. Also, before the same Board, DOE challenged the validity of the January 2008 document collection certifications of the State of Nevada; of Clark County, Nevada; and of the City of Las Vegas. The challenges by DOE to the certifications of the State of Nevada and Clark County, Nevada, are currently pending. The Board has entered an order striking the City of Las Vegas' certification in response to a joint request by the City of Las Vegas and DOE.

Independent Assessments – OCRWM contracted with several groups of leading industry experts to conduct independent assessments of the adequacy of critical areas of the repository project: the engineering processes and procedures and the quality assurance (QA) program. Independent reviews are widely used by the nuclear industry. They are an important part of ensuring both that OCRWM submits a high-quality license application that meets NRC requirements and that OCRWM will be able to aggressively support the licensing process and be ready to move into repository development. These assessments have been completed and made available to the public.

- The engineering processes and procedures independent assessment team reviewed OCRWM's work on repository design and the engineering basis for the license application. Among the conclusions in the assessment report are that the policies and procedures are adequate, the implementing organizations are structured appropriately for the work, and there are no major barriers that will prevent successful completion of the engineering work. Opportunities for improvement are noted in certain areas, including configuration management and the streamlining of processes and procedures.
- The QA program assessment has been completed and is both a programmatic review and implementation assessment. It is directed at evaluating the extent to which NRC quality requirements are being met. The assessment also reviews the program's consistency with commercial nuclear industry practices, and whether it is being implemented effectively. The assessment notes improvements and tangible successes in correcting historical quality-related problems. It concludes that QA program plans are being "implemented consistent with standard nuclear industry practices and to the extent expected given the current status of the Yucca Mountain Project." The conclusions of the assessment provide a sound basis for pursuing continuing improvement of the QA program.

Key Ongoing Activities

License Application – Preparation of the license application continues.

National Environmental Policy Act Documents – On October 5, 2007, DOE issued two draft National Environmental Policy Act (NEPA) documents. The first document, the Draft Repository Supplemental Environmental Impact Statement (SEIS), is a supplement to the Yucca Mountain Final Environmental Impact Statement (EIS) issued in 2002. The Draft Repository SEIS evaluates changes in the potential environmental impacts of constructing and operating the Yucca Mountain repository due to design changes since the Yucca Mountain Final EIS was issued. The Draft Repository SEIS also analyzes changes to national transportation operations. The second document, the Draft Nevada Rail Corridor SEIS and Draft Rail Alignment EIS, evaluates the transportation of spent nuclear fuel and high-level radioactive waste in Nevada. DOE held public meetings at eight locations to receive comments, and over 5,000 oral or written comments were

received. The comment period for both documents ended January 10, 2008. The NEPA documents will be finalized after consideration and analysis of the comments received and preparation of a Comment Response Document. Appropriate changes will be made to the draft NEPA documents, and the final documents will include the Comment Response Document.

Total System Life Cycle Cost Estimate – OCRWM is completing its update to the Total System Life Cycle Cost estimate for the development, construction, operation, and final decommissioning of the Yucca Mountain repository system. The update will be provided to Congress and the public in the near future.

Project Decision Schedule – The Nuclear Waste Policy Act (NWPA) requires DOE to prepare and update, in cooperation with all affected Federal agencies, a Project Decision Schedule (PDS) that identifies the optimum way to attain operation of the repository. The PDS identifies the specific actions that affected Federal agencies, including DOE, must take in order to achieve the schedule presented in the PDS. A draft PDS updated to the current Program milestones was developed in coordination with the affected Federal agencies. We are assessing the impact of the FY 2008 appropriation on these milestones and plan to issue the PDS later this year.

Transportation Preparedness and Emergency Response Training – On July 23, 2007, OCRWM published a *Federal Register* notice presenting for public review and comment the Department's revised proposed policy for implementing Section 180(c) of the NWPA to provide support to States and tribes for transportation preparedness and emergency response training. Stakeholders were engaged in the development of this draft policy. The public comment period was extended from October 23, 2007, to January 23, 2008. Several hundred comments were received and are being reviewed. A supplement to the notice addressing grant funding allocations for tribes is under development.

National Transportation Plan – OCRWM continues to make progress in developing a National Transportation Plan. OCRWM has previously briefed key stakeholders, including State groups, Native American tribes, and industry organizations, on the proposed outline of the plan. A draft of the National Transportation Plan will be provided to the public for review and comment.

Second Repository Report – DOE has begun its evaluation of and report on the need for a second repository. The NWPA requires such a report be provided to Congress no later than January 2010. OCRWM expects to provide this report to Congress this year.

Significant Challenges

Funding Requirements and Access to the Nuclear Waste Fund – The Nuclear Waste Fund currently has a balance of approximately \$21 billion. At the present time, due to budget scoring requirements, the Department cannot receive appropriations from the Nuclear Waste Fund equal to its annual receipts, interest, or corpus for their intended

purpose without a significant recorded negative impact on the Federal budget deficit. The monies collected are counted as mandatory receipts in the budgetary process, and spending from the Nuclear Waste Fund is scored against discretionary funding caps for the appropriations process. The Administration has proposed legislation that would fix this problem by reclassifying mandatory Nuclear Waste Fund fees as discretionary in an amount equal to appropriations from the Fund for authorized waste disposal activities. Funding for the Program would still have to be requested by the President and appropriated by the Congress from the Nuclear Waste Fund.

Current funding levels are insufficient to build the repository and the transportation system. If the Program continues to be funded at its current levels without fixing the current funding mechanism, the shortfall in the funding needed would be between \$1.0 billion and \$1.5 billion per year. In short, DOE will not be able to execute its responsibilities under the NWPA.

The projected taxpayer liabilities associated with delay in opening the repository are currently estimated to be approximately \$7 billion, assuming operations begin in 2017. Further delaying the opening of the repository to 2020 could cost the taxpayers as much as an additional \$4 billion from the Judgment Fund to pay damages to utilities holding contracts. If the requested fixes to the funding process are not enacted, DOE will not be able to set a credible opening date for the repository, and Government liability will continue to grow.