



Department of Energy

Washington, DC 20585

MAY 13 2004

The Honorable John T. Conway
 Chairman
 Defense Nuclear Facilities Safety Board
 625 Indiana Avenue, N.W. – Suite 700
 Washington, D.C. 20004

Dear Mr. Chairman:

Below is Section 3116 of the Senate version of the FY 2005 Defense Authorization bill as reported by the Senate Armed Services Committee May 11, 2004:

“(a) **IN GENERAL** – Notwithstanding any other provision of law, with respect to material stored at a Department of Energy site at which activities are regulated by the State pursuant to approved closure plans or permits issued by the State, high-level radioactive waste does not include radioactive material resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy determines –

- (1) does not require permanent isolation in a deep geologic repository for spent fuel or highly radioactive waste pursuant to criteria promulgated by the Department of Energy by rule in consultation with the Nuclear Regulatory Commission;
- (2) has had highly radioactive radionuclides removed to the maximum extent practical in accordance with the Nuclear Regulatory Commission-reviewed criteria; and
- (3) in the case of material derived from the storage tanks, is disposed of in a facility (including a tank) within the State pursuant to a State-approved closure plan or a State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this Act.

(b) **INAPPLICABILITY TO CERTAIN MATERIALS** – Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the State.

(c) **SCOPE OF AUTHORITY TO CARRY OUT ACTIONS.** – The Department of Energy may implement any action authorized –



(1) by a State-approved closure plan or State issued permit in existence on the date of enactment of this section; or

(2) by a closure plan approved by the State or a permit issued by the State during the pendency of the rulemaking provided for in subsection (a).

Any such action may be completed pursuant to the terms of the closure plan or the State-issued permit notwithstanding the final criteria adopted by the rulemaking pursuant to subsection (a).

(d) STATE DEFINED. – In this section, the term “State” means the State of South Carolina.”

In accordance with provisions of the Atomic Energy Act as amended and the more than 14 years of safety oversight experience of the Board, it would be helpful if the Defense Nuclear Facilities Safety Board (Board) would advise the Secretary of Energy as to the Board’s evaluation of the safety consequences of the enactment of this provision.

Sincerely,

A handwritten signature in cursive script that reads "Jessie Hill Roberson". The signature is written in black ink and is positioned above the printed name and title.

Jessie Hill Roberson
Assistant Secretary for
Environmental Management