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U.S. Department of Energy
Before the
Committee on Environment and Public Works
United States Senate

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Madam Chairman, Senator Inhofe and Members of the Committee, I am Edward F. Sproat, III, Director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). I would like to thank the Committee for the opportunity to discuss the status of the Department's efforts to submit a license application to the Nuclear Regulatory Commission (NRC) for authorization to construct a repository for the permanent disposal of the Nation's spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada.

Since my confirmation by the Senate in May of 2006, I have focused on developing a high-quality and docketable license application and submitting that application to the NRC in a timely manner. I set as one of my strategic objectives the submittal of that application no later than June 30, 2008 and we are currently on schedule to accomplish that objective. Today I would like to discuss the regulatory framework for the licensing of the Yucca Mountain repository and to provide a status of our commitment to submit that license application by June 30, 2008.

The Framework for Licensing the Yucca Mountain Repository

The Nuclear Waste Policy Act of 1982, as amended (the NWPA) established a process and schedule for the siting, construction and operation of a national repository for spent nuclear fuel and high-level radioactive waste. On February 15, 2002, the President submitted his recommendation to Congress recommending Yucca Mountain as the site for the development of a repository in accordance with the NWPA, and on April 8, 2002 Congress passed House Joint Resolution 87 approving the Yucca Mountain site as the location for the Nation's repository. This Joint Resolution was signed into law by the President on July 23, 2002.

Under section 114(b) of the NWPA, 42 U.S.C. 10134 the Department must now prepare and submit a license application to the NRC. The NRC will evaluate DOE's license application in accordance with the regulations developed pursuant to the NWPA and the Energy Policy Act of 1992, including 10 C.F.R. Part 63 (Disposal of High-Level Waste in a Geologic Repository at Yucca Mountain, Nevada). As part of the licensing process, DOE will be required to demonstrate that the proposed repository meets the regulatory radiation protection standards which have been established and adopted by the Environmental Protection Agency (EPA) and incorporated by the NRC into 10 C.F.R.

Part 63 pursuant to the Energy Policy Act of 1992, which required EPA to set site-specific standards to protect public health and safety from releases of radioactive material stored or disposed of in the repository at the Yucca Mountain site.

Pursuant to the Energy Policy Act of 1992, EPA promulgated public health and safety standards for radioactive materials to be disposed of in the Yucca Mountain repository. 40 C.F.R. 197 (2001)(Public Health and Radiation Protection Standards for Yucca Mountain, NV); 10 C.F.R. Part 63 (2004). In 2004, in response to legal challenges, the U.S. Court of Appeals for the District of Columbia Circuit remanded the portions of those standards that addressed the period of time for which compliance must be demonstrated. In 2005, EPA proposed new standards to address the court's decision. Under the existing standards, estimated repository performance will be compared to a mean annual dose of 15 millirem for the first 10,000 years after closure. Under the proposed standards, estimated repository performance would be compared to a median annual dose of 350 millirem for the post-10,000 year period. The Department expects that EPA will issue its revised final radiation exposure standard in the near future and that NRC will subsequently adopt those regulations. While NRC will need to have adopted its corresponding final regulations before it can issue the construction authorization, DOE does not need the final radiation protection standard to develop or submit its license application.

Finally, under the NWPAA the NRC retains National Environmental Policy Act (NEPA) responsibilities with respect to issuance of a license. However, the NWPAA provides that any environmental impact statement that DOE prepares “. . . shall to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository.” To the extent NRC adopts DOE's environmental impact statement, under the NWPAA that adoption shall be deemed to also satisfy the responsibilities of the Commission under NEPA.

Current Status of License Application

The Department is currently preparing its license application as required by the NWPAA and plans to submit the application to NRC not later than June 30, 2008. Approximately five years will have elapsed between when the site recommendation was approved and submittal of the application. In working towards a submittal by June 30, 2008, DOE has not put schedule ahead of quality. Quality and timeliness are not mutually exclusive and our license application will be the product of a disciplined approach. Our application must be sufficient to withstand a thorough and rigorous adjudication by the NRC, with scrutiny by NRC's technical experts and with full opportunity for challenges by the State of Nevada and other interveners. The license application will integrate the results of over twenty years of scientific and engineering work which is now ready to be scrutinized by the NRC's technical experts and the public. When the EPA standard is final, NRC can finalize its corresponding regulation. NRC will then be able to examine the results of our analyses and determine, as part of NRC's decision as to whether the materials can be disposed of without unreasonable risk to the health and safety of the public. Therefore,

NRC cannot reach its licensing decision on the safety of the facility until EPA standards and NRC regulations become final. I am confident that the analyses contained in our application will be sufficiently robust for NRC to be able to make that determination.

The Department has also prepared a *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada* (Final EIS) which was issued in 2002. On October 12, 2007, the Department published a Notice of Availability of a *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Draft Repository SEIS) which DOE also expects will be completed and submitted to NRC not later than June 30, 2008. This Draft Repository SEIS evaluates the potential environmental impacts of constructing and operating the Yucca Mountain repository under the repository design and operational plans that have been developed since the Final EIS was issued in 2002.

On October 19, 2007, the Department certified its document collection for the NRC's Licensing Support Network (LSN). The LSN is a web-based information system that makes electronically available documentary materials related to the Department's license application. As of today, DOE has made approximately 3.5 million documents, estimated to exceed 30 million pages, electronically available to the public on the LSN. These documents include scientific, engineering, and other documents related to DOE's license application. The Department will update its certification at the time of license application submittal as is required by NRC regulations, and we will continue to supplement the document production throughout the discovery phase of the NRC licensing proceeding.

In conclusion, I appreciate this opportunity to review the process to license the Yucca Mountain repository as defined in the NWPA and to provide an update on the progress we are making. Since the site was approved by Congress in 2002, the Department will have taken over six years to reach the next step – to file a license application with the NRC. I came to the Department to fulfill the Congressional mandate to follow through with the application to the NRC and I plan to meet my commitment to submit the application to the NRC within the next eight months.