

**Statement of Christopher A. Kouts
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Office of Civilian Radioactive Waste Management
U.S. Department of Energy
Before the Committee on the Budget
U.S. House of Representatives
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Mr. Chairman and Members of the Committee, I am Christopher A. Kouts, Acting Director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). I appreciate the invitation to appear before the Committee to provide a brief status of the Civilian Radioactive Waste Management Program and to discuss the Government's liability due to the delay in meeting its obligation to begin the acceptance of commercial spent nuclear fuel by January 31, 1998.

The mission of the Department of Energy's Office of Civilian Radioactive Waste Management is to manage and dispose of the Nation's commercial and defense high-level waste and spent nuclear fuel in a manner that protects public health, safety, and the environment. The Nuclear Waste Policy Act of 1982, as amended, directs the Office of Civilian Radioactive Waste Management to provide for the development of one authorized repository for the permanent disposal of waste through site characterization activities, a specific site approval process, and submittal of a license application, among other things. The Act authorizes one commercial spent nuclear fuel interim storage facility under certain conditions.

The Department's FY 2010 budget request announces the Administration's intended termination of the Yucca Mountain repository project and includes the funding needed to explore alternatives for nuclear waste disposal and to continue participation in the Nuclear Regulatory Commission license application process. All funding for the development of the Yucca Mountain facility and related infrastructure – such as further land acquisition, transportation access, and additional engineering – has been eliminated.

The Department remains committed to meeting its obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste. To that end, the Secretary is convening a Blue-Ribbon Panel of experts to evaluate alternative approaches for meeting the Federal Government's responsibility.

Government Liability

The Nuclear Waste Policy Act authorizes the Secretary to enter into contracts with commercial nuclear utilities and commercial research reactor operators that own and generate spent nuclear fuel. Under the terms of these contracts, in return for the payment of a fee of 1 mill per kilowatt-hour, the Government was to begin disposing of the spent nuclear fuel starting in 1998. The fees collected under these contracts are deposited in the Nuclear Waste Fund. The Fund currently has a balance of approximately \$23 billion

which is invested in U.S. Treasury instruments. The Government receives over \$750 million per year in revenues from on-going nuclear generation and the Fund averages approximately \$1 billion annual return on its investments. To date, utility contract holders have paid approximately \$17 billion in fees.

Beginning in 1998, most contract holders initiated lawsuits against the Government due to the delay in beginning the acceptance of spent nuclear fuel as required by the contracts. Courts have determined the delay was a partial breach of contract by the Government, and numerous trials have been held to determine the amount of damages to be awarded.

As of May 2009, 71 lawsuits have been filed by utilities to recover damages resulting from the delay. The Department of Justice, with the Department of Energy's assistance, has been able to settle ten of the lawsuits. This represents approximately 36 percent of the commercial nuclear power reactors that are covered by waste disposal contracts. To date, close to \$600 million in claims have been paid under these settlements. Payments are made from the Treasury Department's Judgment Fund. Under these settlements, contract holders will continue to submit annual claims for additional costs, and additional annual payments will be made until the Government "catches up" with its spent fuel acceptance obligations, as they are defined in the settlement agreements.

Of the remaining 61 lawsuits, four judgments were affirmed resulting in \$35 million paid. Six of the cases were dismissed. The other 51 cases remain pending. Of the 51 pending cases, 17 were tried with judgments subject to post-trial motions, appeals, or remands for a combined total of \$790 million. As the damages in each trial are limited to those costs incurred prior to the beginning of trial, future lawsuits may be brought by the utilities to recover alleged additional damages until the Government has accepted their spent nuclear fuel.

Last year, the Department estimated the liabilities under current law resulting from delaying the beginning of waste acceptance from 1998 to 2020 at \$12.3 billion. We have not attempted to further update that estimate.

CONCLUSION

The Department remains committed to meeting its obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste. The Secretary's Blue-Ribbon Panel will provide the opportunity for a dialogue on how best to address this challenging issue, and the Panel's recommendations will provide a basis for working with Congress to revise the national policy. The Department looks forward to an ongoing dialogue with members of Congress, interested stakeholders, and others as alternative waste management approaches are reviewed.

Thank you for this opportunity to discuss these issues, and I would be pleased to answer any questions the Committee may have at this time.