



Committee on
SCIENCE, SPACE, AND TECHNOLOGY

RALPH M. HALL, CHAIRMAN

Yucca Mountain:

The Administration's Impact on U.S. Nuclear Waste Management Policy

Report by the Majority Staff of the House Science, Space, and Technology Committee

June 2011

Authority and Jurisdiction

Pursuant to Rule X of the U.S. House of Representatives, the Committee on Science, Space, and Technology Committee has jurisdiction over the following areas pertinent to civilian radioactive waste management, and Yucca Mountain in particular: All energy research, development, and demonstration therefor, and all federally owned or operated nonmilitary energy laboratories; environmental research and development; commercial application of energy technology; and scientific research, development, and demonstration, and project therefor.¹

Rule X also tasks the Committee with a special oversight function to review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.² Additionally, Rule XI allows the Committee to conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under Rule X.³ Since the passage of the Nuclear Waste Policy Act of 1982 in the 97th Congress, the Committee has actively engaged in the scientific evaluation of nuclear waste repository site selection and evaluation through oversight hearings and legislative activity.⁴

¹ Note: The Committee has general oversight responsibilities in order to assist the House in –

- (1) its analysis, appraisal, and evaluation of –
 - (A) the application, administration, execution, and effectiveness of Federal laws; and
 - (B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and
 - (C) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

In order to determine whether laws and programs within the jurisdiction of the Committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, the Committee is tasked with reviewing and studying on a continuing basis –

- (A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;
- (B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction.
- (C) Any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto)

² Rule X, Rules of the House of Representatives, 112th Congress, January 5, 2011. Available at: http://rules.house.gov/Media/file/PDF_112_1/legislativetext/112th%20Rules%20Pamphlet.pdf

³ Rule XI, Rules of the House of Representatives, 112th Congress, January 5, 2011. Available at: http://rules.house.gov/Media/file/PDF_112_1/legislativetext/112th%20Rules%20Pamphlet.pdf

⁴ See Appendix B.

EXECUTIVE SUMMARY

Over the course of the last two and a half years, Committee Republicans have reviewed in depth Administration actions associated with the Yucca Mountain Project and disposal of the Nation's spent nuclear fuel and high level radioactive waste. Focusing in particular on the scientific and technical information and processes associated with key policy decisions, the Committee's effort included numerous letters to Administration officials, extensive questioning at Committee hearings, and acquisition and review of thousands of pages of internal documents. This report details the results of our review of the Administration's actions related to Yucca Mountain in the context of promises and specific guidelines on scientific integrity, openness, and transparency set forth by President Obama and senior Administration officials.

The results of this review are striking. Despite numerous suggestions by political officials—including President Obama—that Yucca Mountain is unsafe for storing nuclear waste, the Committee could not identify a single document to support such a claim. To the contrary, the Committee found great agreement among the scientific and technical experts responsible for reviewing the suitability of Yucca Mountain—considered by many to be “the most studied piece of land on Earth”—that nuclear waste can be safely stored at the site for tens of thousands of years in accordance with Nuclear Regulatory Commission (NRC) requirements.

Most noteworthy in this regard is Volume III of the NRC's Safety Evaluation Report (SER)—a comprehensive technical evaluation of site safety critical to advancing licensing and construction of the Yucca facility. Obtained by the Committee only after repeated demands and over the objections of the NRC Chairman, SER Volume III demonstrates in excruciating detail the level of technical support among NRC and Department of Energy (DOE) experts in favor of the site's advancement: the Committee found that NRC agreed with over 98.5 percent of DOE's findings regarding the site's suitability to meet regulatory requirements. The remaining 1.5 percent did not impact the NRC staff's overall conclusions, which found that DOE's Yucca Mountain License Application complies with applicable NRC safety requirements, including those related to human health and groundwater protection, and the specific performance objectives called for in NRC regulations for disposal of high-level radioactive wastes at Yucca Mountain (10 CFR 63.113-115).

Why, then, has the President shut down the Yucca Mountain Project? And why does NRC Chairman Jaczko refuse to permit NRC safety review of the site to continue, and refuse to allow his fellow Commissioners to formally vote on DOE's Motion to Withdraw the Yucca Mountain License Application? The answer is clearly not explained by or based on any scientific or technical evaluation.

While the specific instances of concern uncovered by the Committee and detailed in this report are convincing in and of themselves, they collectively reveal not just a pattern, but a systematic and active effort on the part of the Administration to obfuscate, delay, and muzzle scientific and technical information and related processes in order to shut down Yucca Mountain.

These actions have not only violated the President's own highly promoted principles and directives on scientific integrity, transparency, and openness, they have also increased taxpayer liabilities under the Nuclear Waste Policy Act, left nuclear waste sitting at reactor sites across the country with no plan for disposal, and ultimately threatened the long-term potential of nuclear power to meet America's growing energy demands with safe, clean, and affordable baseload electricity.

In closing, it should be noted that, despite the path that has been worn and the damage that has been done, the Administration still has ample opportunity to make things right. Disclosing to Congress the relevant and necessary information related to the Yucca Mountain decision process, allowing formal completion of the Safety Evaluation Reports, and bringing the DOE's Motion to Withdraw its license application to a vote before the full Commission would go a long way to restoring public confidence in the nuclear waste management policy process.

“Other than the termination of the Department's Super Conducting, Super Collider Project in Texas in 1998, we know of no comparable single project termination in the Department's recent history as consequential as Yucca Mountain, given the importance of its intended mission, the massive investment in real and personal property and the development and compilation of huge quantities of Project-related, intellectual property.”

– DOE Inspector General, July 2010

TABLE OF CONTENTS

Authority and Jurisdiction	Inside Cover
Executive Summary	
I. Foreword	1
1. Background	4
1.1 The History of Yucca Mountain	
1.2 The History of Yucca Mountain Legislation	
1.3 The History of Scientific, Technical, and Safety Reviews	
2. Chronology of Events Under the Obama Administration	10
2.1 President Obama’s Campaign Promise	
2.2 The Shutdown Announcement	
2.3 The Blue Ribbon Commission	
2.4 DOE’s Motion to Withdraw and Related License Application Activities at the NRC	
2.5 Closure of NRC’s High-Level Waste Program	
2.6 The Administration’s Justification for Closing Yucca Mountain	
2.7 The Shutdown of OCRWM	
3. Taxes, Liabilities, and Implications	15
4. The Department of Energy	18
4.1 Previous Concerns with DOE Decision-making and Project Management	
4.2 Correspondence between the Committee and the Administration	
4.3 Outside Reports and Activities	
4.4 Committee Review of Documents	
4.4.1 Scientific Integrity	
4.4.2 Shutdown Planning and the Retention of Documents and Science	
4.4.3 Lack of Scientific or Technical Justification to Determine YMP is Not Safe or Viable	
5. The Nuclear Regulatory Commission	29
5.1 Correspondence between Committee Members and the NRC	
5.2 Committee Review of Documents	
5.2.1 Volume III of the Safety Evaluation Report	
5.2.2 Safety Evaluation Report Volume III Content	

- 5.2.3 “Update on the Yucca Mountain Program” Memorandum
- 5.3 Slow Walking of the ASLB Decision
- 5.4 Internal Disputes over NRC’s Closure of the High-Level Waste Program

6. Summary and Conclusions 39

Appendix A – Acronyms

Appendix B – Committee Hearings

Appendix C – March 3, 2010 Committee Hearing

Appendix D – Correspondence

Appendix E – Documents

FOREWORD

“I will restore the basic principle that government decisions should be based on the best-available, scientifically valid evidence and not on the ideological predispositions of agency officials or political appointees.”

– Barack Obama to *Nature* Magazine, September 2008

The Science, Space, and Technology Committee has conducted active oversight of the issue of scientific integrity throughout the government, a theme consistently touted by the Obama Administration. Even before taking office, the President’s transition office established a clear commitment to “Restore Scientific Integrity to the White House,” and stated that the incoming administration would “[r]estore the basic principle that government decisions should be based on the best available, scientifically valid evidence and not on ideological predispositions.”⁵

President Obama further emphasized this point in his inaugural address when he promised to “restore science to its rightful place.”⁶ These assurances were once again affirmed by the President before the National Academy of Sciences on April 27, 2009 when he stated “[u]nder my administration, the days of science taking a back seat to ideology are over.”⁷

The President went on to pledge a “new effort to ensure that federal policies are based on the best and most unbiased scientific information,” and stated, “I want to be sure that the facts are driving scientific decisions –and not the other way around.”⁸ He continued to highlight these tenets in a Presidential Memorandum that tasked the Director of the Office of Science and Technology Policy (OSTP) to develop recommended principles for ensuring scientific integrity within 120 days. In that memo, the President stated:

“Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions.”⁹

⁵ “The Obama-Biden Plan, Technology Agenda,” The Office of the President-Elect. Available at: http://change.gov/agenda/technology_agenda

⁶ President Barack Obama’s Inaugural Address, January 21, 2009. Available at: <http://www.whitehouse.gov/blog/inaugural-address>

⁷ Remarks by the President at the National Academy of Sciences, The White House, April 27, 2009. Available at: <http://www.whitehouse.gov/the-press-office/remarks-president-national-academy-sciences-annual-meeting>

⁸ Ibid.

⁹ White House Memorandum, Subject: Scientific Integrity, March 9, 2009. Available at: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09

The Presidential Memorandum continued, “[t]he public must be able to trust the science and scientific process informing public policy decisions.”¹⁰ It also directed that “[t]o the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking,” and that “[p]olitical officials should not suppress or alter scientific or technological findings and conclusions.”¹¹

“I started corresponding with John Holdren (in his position leading the National Commission on Energy Policy) back in October, 2008, about the scientific integrity problem that would emerge if a new Obama administration were to withdraw the Yucca Mountain license application and thus stop the independent NRC technical review of that application.”

– Email from Per Peterson to DOE Ass’t Secretary Warren Miller

Despite the President’s call for recommendations on scientific integrity in 120 days, the Director of OSTP took nearly two years to respond to the tasking, ultimately only providing “further guidance” to agencies, and directed them to submit draft guidelines to OSTP.¹² In that memo, the OSTP Director stated, “[s]cience, and public trust in science, thrives in an environment that shields scientific data and analysis from inappropriate political influence; political officials should not suppress or alter scientific or technical findings.”¹³

The Director of OSTP also directed all executive branch departments to provide a progress report on the adoption of scientific integrity policies. It was reported the progress reports were submitted on April 21, 2011, including the Department of Energy’s progress report.¹⁴ However, despite President Obama’s commitment to openness, the reports are not publicly available.

The Administration’s promises on transparency and openness have been just as strong as its rhetoric on scientific integrity. In issuing a January 2009 memorandum titled “Transparency and Open Government,” the President stated:

“My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government. ... Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use.”¹⁵

¹⁰ Ibid.

¹¹ Ibid.

¹² Office of Science and Technology Policy Memorandum, Subject: Scientific Integrity, December 17, 2011. Available at: <http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>

¹³ Ibid.

¹⁴ “Agencies Report Scientific Integrity Progress,” OSTP Blog, April 21, 2009. Available at: www.whitehouse.gov/blog/2011/04/21/agencies-report-scientific-integrity-progress

¹⁵ White House Memorandum, Subject: Transparency and Open Government, January 21, 2009. Available at: http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment

In December 2009, the White House Office of Management and Budget (OMB) issued a directive to agencies to uphold and advance the President's transparency goals, stating as a high-level principle that, "[t]o create an unprecedented and sustained level of openness and accountability in every agency, senior leaders should strive to incorporate the values of transparency, participation, and collaboration into the ongoing work of their agency."¹⁶

In response to the Directive, the NRC issued an Open Government Plan to guide implementation of the OMB Directive.¹⁷ The NRC Plan notes that "The NRC views nuclear regulation as the public's business and, as such, believes it should be transacted as openly and candidly as possible to maintain and enhance the public's confidence. Ensuring appropriate openness explicitly recognizes that the public must be informed about, and have a reasonable opportunity to participate meaningfully in, the NRC's regulatory processes."¹⁸

Nuclear Regulatory Commission Chairman Gregory Jaczko added his personal emphasis to NRC's commitment, stating, "I believe that all of this scrutiny and attention makes it even more important that we conduct the public's work in an open and transparent manner."¹⁹ Chairman Jaczko went on to state:

"Over the past few months, we have moved forward with implementing the President's Open Government Directive. As an independent agency, we were not required to comply with this Directive, but we have done so because it's in line with our historic organizational commitment to openness and transparency. This is an area that will always require our continuing focus. We can't simply check a few boxes on a form, and then declare ourselves open and transparent. We have to continually explain to the public what we are doing, how we are doing it, and why we are doing it."²⁰

The Department of Energy touted similar objectives in its own Open Government Plan, committing to "increase transparency, participation and collaboration across its unique programs and offices" and "advance open government in support of a more effective Department for its employees and for American people, businesses and communities."²¹

The Committee regularly reviews whether administration actions comply with stated policy. In this instance, the Administration's declarations on both scientific integrity and transparency must be taken into account when evaluating its handling of the Yucca Mountain Project. This report examines Administration actions related to Yucca Mountain in the context of promises and specific guidelines on scientific integrity, openness, and transparency set forth by President Obama and senior Administration officials.

¹⁶ Office of Management and Budget Memorandum, Subject: Open Government Directive, December 8, 2009. Available at: www.whitehouse.gov/open/documents/open-government-directive

¹⁷ "Open Government Plan," U.S. Nuclear Regulatory Commission, June 7, 2010. Available at: www.nrc.gov/public-involve/open/philosophy/nrc-open-gov-plan.pdf

¹⁸ "Strategic Plan, Fiscal Years 2008-2013," U.S. Nuclear Regulatory Commission, February, 2008. Available at: www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v4/sr1614v4.pdf#page=20

¹⁹ "A Strong Foundation, A Strong Regulatory Future," Dr. Gregory B. Jaczko, Chairman, U.S. Nuclear Regulatory Commission, March 9, 2010. Available at: <http://pbadupws.nrc.gov/docs/ML1006/ML100680213.pdf>

²⁰ Ibid.

²¹ "Open Government Plan," U.S. Department of Energy, June 2010. Available at: www.energy.gov/open/opengovplan_html.htm

Chapter 1. Background

1.1 The History of Yucca Mountain

For over fifty years, scientists have considered how best to manage radioactive waste materials.²² A deep geological repository has been, and continues to be, the most agreed upon method by numerous credible scientific bodies to dispose of radioactive waste.

In the late 1970's, the United States government began serious consideration of geological repositories. Initially, DOE considered numerous sites scattered throughout the country, but quickly focused on three specific sites including Yucca Mountain, Nevada; Hanford, Washington; and Deaf Smith County, Texas. DOE began studying Yucca Mountain in 1978 and an Environmental Impact Statement issued in 1980 proposed to “adopt a national strategy to develop a mined geologic repository for disposal of commercially generated high-level and transuranic radioactive waste.”²³ DOE ultimately judged Yucca Mountain, a site about 100 miles from Las Vegas, on the edge of the Nevada Test Site, to have the “best overall prospects for being considered a suitable repository site.”²⁴



Aerial View of Yucca Mountain

²² “The Disposal of Radioactive Waste,” National Academy of Sciences, Board of Radioactive Waste Management, September 1957. Available at: www.nap.edu/openbook.php?record_id=10294

²³ “Management of Commercially Generated Radioactive Waste,” Environmental Impact Statement, U.S. Department of Energy, October 1980. Available at: www.energy.gov/media/EIS0046F_33515.pdf

²⁴ Hearing titled “Nuclear Waste Program,” Committee on Energy and Natural Resources, U.S. Senate, June 29, 1987. Available at: www.archive.org/stream/nuclearwasteprog04unit/nuclearwasteprog04unit_djvu.txt

1.2 The History of Yucca Mountain Legislation

Since the U.S. Government began nuclear waste specific studies into Yucca Mountain nearly 35 years ago, Congress has consistently voted in support of a national geological repository at the site. This legislative record began in the 97th Congress with the passage of the Nuclear Waste Policy Act of 1982 (NWPA) that centralized the long-term management of nuclear waste, most notably by mandating construction of a safe and permanent nuclear waste repository. In 1987, Congress amended the NWPA by designating Yucca Mountain as the only site to be considered as a repository by a vote of 237-181 in the House of Representatives and 61-28 in the Senate. In 2002, Congress reaffirmed this designation by a vote of 306-117 in the House of Representatives and a vote of 60-39 in the Senate. Again in 2007, the House of Representatives overwhelmingly rejected, by a vote of 80-351, an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program.

The NWPA also assigned responsibility for various aspects of the repository to four primary entities:

1. The Department of Energy to site, construct, operate, and close a repository;
2. The Environmental Protection Agency to set public radiological health and safety standards for a repository;
3. The Nuclear Regulatory Commission to promulgate regulations governing construction, operation, and closure of a repository; and
4. The civilian nuclear power industry to handle the costs of disposal of spent nuclear fuel and high-level radioactive waste.²⁵

As part of the nuclear industry responsibility under NWPA, the collection from nuclear power users of one mil (or one-tenth of one cent) per kilowatt-hour of nuclear generated electricity was mandated to provide funding for development of the eventual site.

1.3 The History of Scientific, Technical, and Safety Reviews

Since the NWPA passed in 1982, Yucca Mountain has been exhaustively examined, commonly earning it the moniker of the “most studied piece of land in the world.”²⁶ These site examinations have resulted in tens of thousands of pages of scientific, engineering, and technical studies contributing to a robust level of confidence in the safety and radiological protection characteristics of the site.

In June 1985, DOE’s Office of Civilian Radioactive Waste Management (OCRWM) submitted the “Mission Plan for the Civilian Radioactive Waste Management Program,” that set forth the overall goals, objectives, and strategy to dispose of spent nuclear fuel and high-level waste. It further presented detailed information required by the NWPA, for “obtaining information; potential financial, institutional, and legal issues; plans for the test and evaluation facility; the

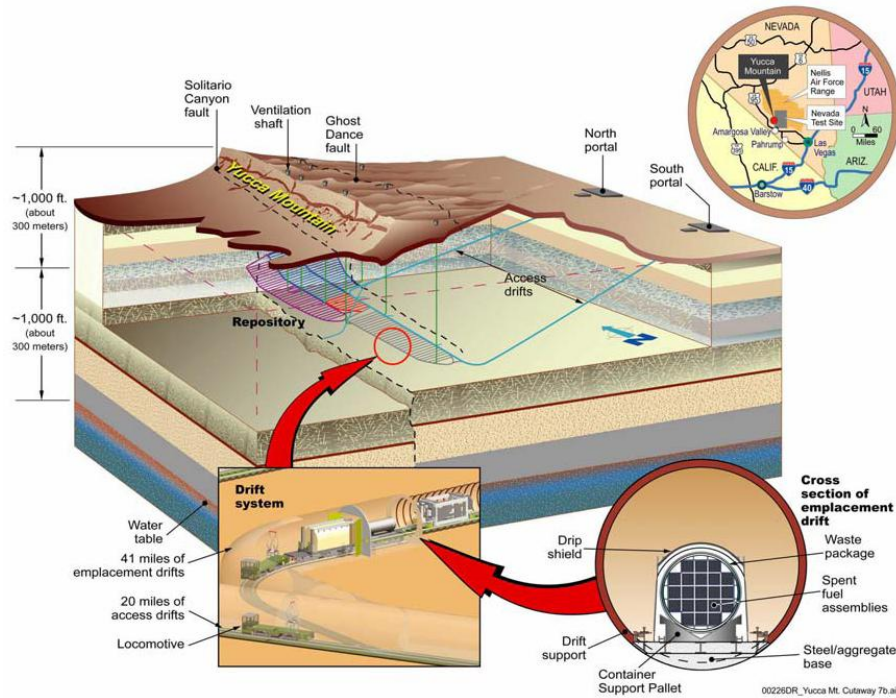
²⁵ “Yucca Mountain Science and Engineering Report: Technical Information Supporting Site Recommendation Consideration,” Department of Energy, Office of Civilian Radioactive Waste Management, February 2002. Available at: <http://www.energy.gov/media/SER.PDF>

²⁶ “Yucca Mountain: The Most Studied Real Estate on the Planet,” U.S. Senate Committee on Environment and Public Works, March 2006. Available at: <http://epw.senate.gov/repwhitepapers/YuccaMountainEPWReport.pdf>

principal results obtained to date from site investigations; information on the site-characterization programs; information on the waste package; schedules; costs; and socioeconomic impacts.”²⁷ The Mission Plan provided a foundation for future site characterization and the path to open a permanent geologic repository.

As early as 1984, DOE published a draft environmental assessment of the Yucca Mountain Project that was incorporated into a May 1986 DOE report on multi-attribute utility analysis.²⁸ In the analysis, DOE used quantitative methods to rank possible sites on pre-closure and post-closure technical guidelines. Among the sites considered, Yucca Mountain was rated as the best option and most resilient to all impacts. DOE continued to study the public health and safety implications associated with opening Yucca Mountain.

In December 1998, DOE published five volumes titled the “*Viability Assessment of a Repository at Yucca Mountain.*” This Viability Assessment noted the design of a repository at Yucca Mountain had undergone multiple improvements to reduce uncertainties and improve its performance, highlighting that repository design is an iterative process, always incorporating a greater understanding of underlying scientific and technical issues. The report concluded that, “based on the viability assessment, DOE believes that Yucca Mountain remains a promising site for a geologic repository.”²⁹



Cutaway Diagram of the Yucca Mountain Repository Design

²⁷ “Mission Plan for the Civilian Radioactive Waste Management Program, Volume I,” Department of Energy, Office of Civilian Radioactive Waste Management, June 1985. Available at: http://www.energy.gov/media/MissionPlan-HQP-19870601-0271_pp1-250.pdf

²⁸ “A Multiattribute Utility Analysis of Sites Nominated For Characterization For the First Radioactive Waste Repository - A Decision Aiding Methodology,” May 1986. Available at: http://www.energy.gov/media/Multiattribute-Utility-Analysis_HQS-19880517-1167_pp1-250.pdf

²⁹ “Viability Assessment of a Repository at Yucca Mountain,” Department of Energy, Office of Civilian Radioactive Waste Management, December 1998. Available at: http://www.energy.gov/media/Viability_Overview_b_1.pdf

In February 2002, OCWRM published the “*Yucca Mountain Science and Engineering Report: Technical Information Supporting Site Recommendation Consideration.*” The report “describes the results of scientific and engineering studies of the Yucca mountain site, the waste forms to be disposed, the repository and waste package designs, and the results of the most recent assessments of the long-term performance of the potential repository.”³⁰

Upon review of OCWRM’s analysis of key technical aspects relating to Yucca Mountain, then-Secretary of Energy Spencer Abraham formally recommended to President George W. Bush that a geological repository for spent nuclear fuel and high-level radioactive waste should be located at Yucca Mountain. In his recommendation of Yucca Mountain, Abraham noted:

I have considered whether sound science supports the determination that the Yucca Mountain site is scientifically and technically suitable for the development of a repository. I am convinced that it does. The results of this extensive investigation and the external technical reviews of this body of scientific work give me confidence for the conclusion, based on sound scientific principles, that a repository at Yucca Mountain will be able to protect the health and safety of the public when evaluated against the radiological protection standards adopted by the Environmental Protection Agency and implemented by the Nuclear Regulatory Commission.³¹

Secretary Abraham also pointed out in 2002 testimony to the Senate Energy and Natural Resources Committee that the “scientific evaluation of the Yucca Mountain site had been conducted over a 24-year period.”³² After consideration of Secretary Abraham’s recommendation, President Bush made a formal recommendation to Congress in 2002 to move forward with a repository at Yucca Mountain. The NWPA afforded the state in which the repository was selected to formally disapprove of the selection. In response to Nevada’s objection, Congress reconfirmed the selection of Yucca Mountain by voting to move forward with Yucca Mountain by a vote of 306-117 in the House and adopted the measure by voice vote in the Senate.³³

Following this recommendation, DOE entered the final stages of the site characterization and recommendation process by beginning to prepare the License Application and Safety Analysis Report (SAR) for Yucca Mountain. Meanwhile, technical reviews, quality assurance evaluations, and studies continued to promulgate the necessary regulatory thresholds to protect public health and safety, and prevent adverse environmental impact.

In 2002, DOE published a 15-chapter Environmental Impact Statement (EIS) required by the NWPA in accordance with the National Environmental Policy Act.³⁴ In addition to the original

³⁰ “Yucca Mountain Science and Engineering Report: Technical Information Supporting Site Recommendation Consideration,” February 2002. Available at: <http://www.energy.gov/media/SER.PDF>

³¹ “Energy Timeline for the Year 2002,” U.S. Department of Energy. Available at: <http://www.energy.gov/about/timeline2002.htm>

³² Statement of the Spencer Abraham, Secretary of Energy, Before the House Energy and Natural Resources Committee, May 16, 2002. Available at: <http://www.yuccamountain.org/abraham051602.htm>

³³ “Yucca Mountain Repository Site Approval Act,” Final Vote Results for Roll Call 133, H.J Res. 87, May 8, 2002. Available at: <http://clerk.house.gov/evs/2002/roll133.xml>

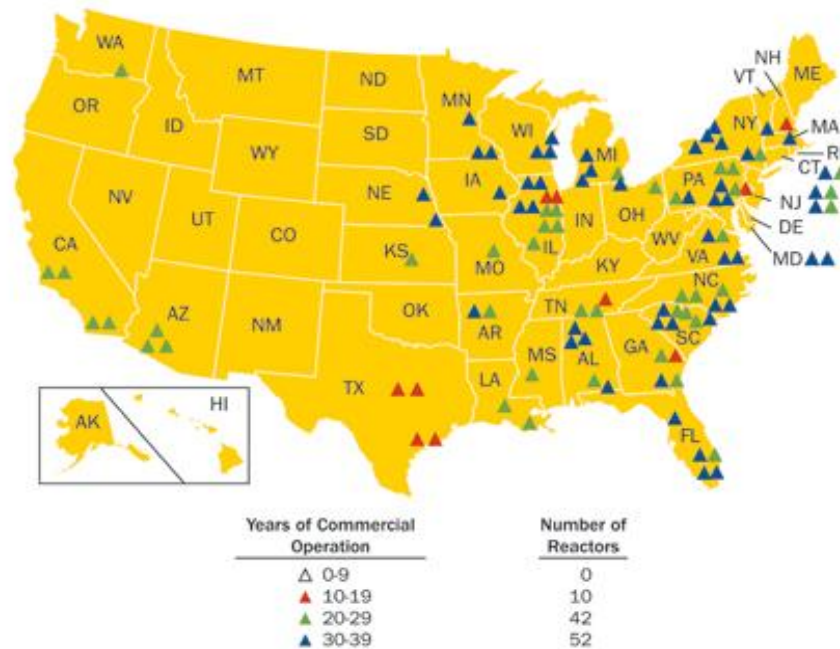
³⁴ “Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada,” February 28, 2002. Available at: <http://pbadupws.nrc.gov/docs/ML0326/ML032690321.html>

EIS, in 2008 DOE submitted a supplemental EIS to resolve points raised following the initial EIS.³⁵ The EIS did not identify any environmental issues that would prevent the Yucca Mountain license from moving forward.

After years of preparation, DOE submitted the License Application (LA) for a High-Level Waste Geologic Repository at Yucca Mountain to the NRC on June 3, 2008.³⁶ The LA included a detailed SAR, focused on the development of the necessary safety and technical thresholds to be considered by the NRC in the SER. The SAR was divided into five chapters: “Repository Safety Before Permanent Closure,” “Repository Safety After Permanent Closure,” “Research and Development Program to Resolve Safety Questions,” “Performance Confirmation Program,” and “Management Systems.”³⁷ Again, no obstacles were identified in the SAR and DOE demonstrated it could safely construct and manage a repository.

Upon receipt of the LA and accompanying SAR, the NRC began work on the five-volume SER. The detailed and meticulously prepared SER reports are intended to provide a final comprehensive analysis of the technical feasibility of Yucca Mountain with respect to its ability to meet regulatory thresholds.

U.S. Commercial Nuclear Power Reactors—Years of Operation



Source: U.S. Nuclear Regulatory Commission

Map of Current Nuclear Power Reactors in the United States

³⁵ Final 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,” July 3, 2008. Available at: <http://pbadupws.nrc.gov/docs/ML0817/ML081750191.html>

³⁶ “DOE’s License Application for a High-Level Waste Geologic Repository at Yucca Mountain,” June 3, 2008. Available at: <http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app.html>

³⁷ “Yucca Mountain Repository License Application: Safety Analysis Report,” June 2008. Available at: <http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app/yucca-lic-app-safety-report.html>

The summary and status of the SER volumes is as follows:

- Volume I: Released August 23, 2010, Volume I found that DOE's license application satisfied the general description of the repository, proposed schedules for activities, and described security measures and site characterization.³⁸
- Volume II: Originally scheduled for release in March 2011,³⁹ before being advanced to December 2010, Volume II assesses pre-closure issues such as placing spent nuclear fuel in the repository and other actions necessary prior to closing the site. Volume II remains private due to NRC Chairman Jazcko's decision to stop final work on this volume.
- Volume III: Completed and waiting approval in July 2010, Volume III evaluates the safety and technical issues associated with post-closure activities. Targeted for release in November 2010, Volume III remains private due to NRC Chairman Jazcko's decision to halt all review of the LA and end the High-Level Waste Program.
- Volume IV: Still pending, originally scheduled for release in January 2011, Volume IV is to address the maintenance, quality assurance, and radiological issues.
- Volume V: Still pending, originally scheduled for release in March 2011, Volume V would include modifications to previous SER volumes and summarize previous four volumes.

While NRC staff were the primary entities responsible for the preparation of the SER, DOE was also closely involved with the document preparation. Contentions, or scientific questions needing to be resolved, were addressed in coordination between the two agencies.

³⁸ "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada; Volume 1: General Information," United States Nuclear Regulatory Commission, August 2010. Available at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1949/#abs>

³⁹ See "Tentative Completion Dates for Safety Evaluation Report Volumes" figure, page 33.

Chapter 2. Chronology of Events Under the Obama Administration

2.1 President Obama's Campaign Promise

President Obama has been a consistent opponent of Yucca Mountain, despite the large number of nuclear power reactors with onsite waste storage in his home state of Illinois.⁴⁰ This skepticism and opposition continued through his Presidential campaign.

Early during his campaign for the presidency, Barack Obama vowed to shut down Yucca Mountain. Campaign materials noted that "Barack Obama and Joe Biden do not believe that Yucca Mountain is a suitable site. They will lead federal efforts to look for safe, long-term disposal solutions based on objective, scientific analysis."⁴¹ Candidate Obama publicly stated:



President Obama with Science Advisor John Holdren

After spending billions of dollars on the Yucca Mountain Project, there are still significant questions about whether nuclear waste can be safely stored there. I believe a better short-term solution is to store nuclear waste on-site at the reactors where it is produced...until we find a safe, long-term disposal solution that is based on sound science.⁴²

2.2 The Shutdown Announcement

With the release of the President's Fiscal Year (FY) 2011 budget request in February 2010, DOE announced its intention to withdraw the License Application for Yucca Mountain. The budget request also declared the Administration's intent to dismantle OCRWM by the end of the fiscal year. DOE immediately initiated the process to shutter the office.

Despite the President's continued assertions that his nuclear waste management policy decisions would be driven by sound science, the Administration has repeatedly refused to provide a scientific or technical justification for its shutdown decision, instead simply stating that Yucca "is not a workable option." Secretary Chu has noted that "technology has advanced" since the NWPA passed in 1982; however he has not specified what those advancements mean and how new technologies change the law.

⁴⁰ Letter from Senator Barack Obama to Senate Majority Leader Harry Reid and Senator Barbara Boxer, Dated October 30, 2007. Available at: http://my.barackobama.com/page/community/post_group/NVHQ/CSYB

⁴¹ "Barack Obama and Joe Biden: New Energy for America," August 3, 2008. Available at: http://pensecinc.com/docs/factsheet_energy_speech_080308.pdf

⁴² "Barack Obama Explains Yucca Mountain Stance." *Las Vegas Review Journal*. May 20, 2007. Available at: <http://www.lvrj.com/opinion/7598337.html>

2.3 The Blue Ribbon Commission

In concurrence with DOE's announcement to close OCRWM and permanently remove Yucca Mountain as an option for a permanent repository, President Obama established the Blue Ribbon Commission on America's Nuclear Future (BRC). The BRC is tasked to evaluate and make recommendations relating to policies guiding fuel cycle technologies, interim waste storage, permanent SNF disposal and related management issues.⁴³ While the BRC is prohibited from making alternative site recommendations due to Yucca Mountain's lawful designation as the repository site, BRC Co-Chairman Lee Hamilton said Secretary Chu made it "quite clear that nuclear waste storage at Yucca Mountain is not an option."⁴⁴ Then-Climate Change Czar Carol Browner said, "It is time to move forward with a new strategy based on the best science,"⁴⁵ in spite of the lack of credible scientific evidence demonstrating Yucca Mountain is not viable.



Energy Secretary Stephen Chu

These actions highlight the highly illogical nature of terminating the only existing waste storage option before assessing potential alternative options.

2.4 DOE's Motion to Withdraw and Related License Application Activities at the NRC

On March 3, 2010, DOE filed a motion with the NRC to withdraw the License Application for a High-Level Waste Repository at Yucca Mountain "with prejudice." By attempting to withdraw *with prejudice*, the Administration would permanently prevent consideration of Yucca Mountain, blocking future Congresses and Administrations from reversing this decision.

The primary argument of the Motion to Withdraw rested on the vague statement that Yucca Mountain isn't a "workable option." The Motion lacked detailed justification in support of this decision, stating for example that "It is the Secretary of Energy's judgment that scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced dramatically over the twenty years since the Yucca Mountain project was initiated."⁴⁶ These general advancements in the understanding of waste storage are of course irrelevant to the fundamental question of whether Yucca Mountain is a suitable site without an open assessment of how this advanced knowledge impacts the safety of the Yucca Mountain Project.

On June 29, 2010, the NRC Atomic Safety and Licensing Board (ASLB)⁴⁷ rejected DOE's Motion to Withdraw. The detailed denial repeatedly stressed the lack of scientific justification

⁴³ Blue Ribbon Commission on America's Nuclear Future, U.S. Department of Energy, "Advisory Committee Charter," March 1, 2010. Available at: http://www.energy.gov/news/documents/BRC_Charter.pdf

⁴⁴ Tetreault, Steve, "Federal panel to examine nuclear waste storage." *Las Vegas Review Journal*. January 30, 2010. Available at: <http://www.lvrj.com/news/federal-panel-to-examine-nuclear-waste-storage-83143397.html>

⁴⁵ Ibid.

⁴⁶ "U.S. Department of Energy's Motion to Withdraw," Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, March 3, 2010. Available at: http://www.energy.gov/media/DOE_Motion_to_Withdraw.pdf

⁴⁷ Note: The ASLB is an independent technical body within NRC that reviews license applications and other technical materials in order to advance Commission decision-making.

provided by DOE. For example, the ASLB notes, “conceding that the Application is not flawed nor the site unsafe, the Secretary of Energy seeks to withdraw the Application with prejudice as a ‘matter of policy’ because the Nevada Site ‘is not a workable option.’”⁴⁸ ASLB also notes, “When Congress selected the Yucca Mountain site over Nevada’s objection in 2002, it reinforced the expectation in the 1982 Act that the project would be removed from the political process and that the NRC would complete an evaluation of the technical merits”⁴⁹ and “DOE has acknowledged that its decision to seek to withdraw the Application is not based on a judgment that Yucca Mountain is unsafe or on flaws in the Application. It should be able to proceed with an evaluation of the technical merits, as directed by the NWSA, without undue discomfort.”⁵⁰ ASLB summarily rejected all aspects of DOE’s Motion to Withdraw, including a comprehensive rejection of the attempt to withdraw with prejudice.

Following the ASLB’s ruling, the full Commission invited participants to file briefs with the Commission to determine whether the Commission should review, and reverse or uphold ASLB’s decision. While it has been publicly acknowledged that the four participating Commissioners have filed their individual positions with the NRC Secretary,⁵¹ NRC Chairman Jaczko has blocked further action on the matter by refusing to schedule a formal meeting to issue a final decision on DOE’s Motion to Withdraw the License Application.

2.5 Closure of NRC’s High-Level Waste Program

During the same timeframe in which the Commissioners were considering the ASLB’s order rejecting DOE’s Motion to Withdraw, the NRC proceeded to halt all work on the High-Level Waste Program (HLW). In accordance with the President’s decision to shutter the Yucca Mountain Project, the FY 2011 NRC budget request for the High-Level Waste Repository program included funds only to carry out work related to an “orderly closure of the agency’s

When Congress selected the Yucca Mountain site over Nevada’s objection in 2002, it reinforced the expectation in the 1982 Act that the project would be removed from the political process and that the NRC would complete an evaluation of the technical merits...

...DOE has acknowledged that its decision to seek to withdraw the Application is not based on a judgment that Yucca Mountain is unsafe or on flaws in the Application. It should be able to proceed with an evaluation of the technical merits, as directed by the NWSA, without undue discomfort.

– NRC Atomic Safety and Licensing Board, February 2010

⁴⁸ ASLB Board Response, page 2.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ling, Katherine, "NRC chairman reveals Yucca vote; still no timeline for decision," E&E Publishing, November 8, 2010. Available at: <http://eenews.net/eenewspm/print/2010/11/08/10>

Yucca Mountain licensing support activities” in correlation to DOE’s announcement of its intention to withdraw the License Application.⁵² The budget request “reflects that possibility” and “upon the withdrawal or suspension of the licensing review, the NRC would begin an orderly closure of the technical review and adjudicatory activities, and would document the work and insights gained from the review.”⁵³ However, when the ASLB rejected DOE’s Motion to Withdraw, the precondition for the NRC’s budget request was not fulfilled.

Unable to pass a complete appropriations bill before the end of the fiscal year, Congress passed, and President Obama signed into law, a Continuing Resolution (CR) to continue funding government operations at existing levels. Shortly thereafter, on October 4, 2010, an NRC memorandum directed all work on HLW to halt because the CR did not “include specific restrictions on spending funds.” Thus, the memo directed staff to “continue its activities on the Yucca Mountain license application in accordance with the Commission’s decision on the FY 2011 budget using available Nuclear Waste Fund resources during the CR.”⁵⁴

However, NRC’s FY 2011 budget request was never signed into law. The Commission therefore opted to shut down a program in the absence of explicit Congressional approval. This directive was unusual and highly controversial, especially given the drastic consequences of the action. An NRC spokesman said he was “not sure whether there was a precedent for the decision.”⁵⁵

The directive halted all NRC review of the LA and prevented the approval process for SER Volume III from moving forward. Commissioner Ostendorff requested a formal meeting to consider the memorandum. However the three Democratic Commissioners - Chairman Jaczko, Commissioner Magwood, and Commissioner Apostolakis - refused to agree to the request and thus a lack of quorum prevented the entire Commission from considering the request. Thus, NRC review of DOE’s License Application including the Safety Evaluation Report came to a halt.

“[T]he Administration’s stated rationale for changing course does not seem to rest on factual findings and thus does not bolster the credibility of our government to handle this matter competently. Those who would distort the science of Yucca Mountain for political purposes should be reminded that it was a year ago today that the President issued his memorandum on scientific integrity, in which he stated that “The public must be able to trust the science and scientific process informing public policy decisions.”

– Dale Klein, Commissioner, Nuclear Regulatory Commission, March, 2010

⁵² “Congressional Budget Justification for FY 2011,” U.S. Nuclear Regulatory Commission, February 2010. www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v26/sr1100v26.pdf

⁵³ Ibid.

⁵⁴ “Guidance Under a Fiscal Year 2011 Continuing Resolution,” U.S. Nuclear Regulatory Commission, October 4, 2010.

⁵⁵ Ling, Katherine, “NRC starts controversial shutdown of Yucca review, E&E Publishing, October 7, 2010. Available at: www.eenews.net/greenwire/2010/10/07/04

2.6 The Administration's Justification for Closing Yucca Mountain

Despite repeated commitments to scientific integrity and adhering to science-informed decisions, the Administration has repeatedly disregarded the lack of scientific evidence regarding the safety of a geologic repository at Yucca Mountain. For example, in a March 3, 2010 hearing with the Committee on Science and Technology, Secretary Chu could not reference a single scientific analysis to justify the Administration's decision not to move forward with Yucca Mountain.⁵⁶

As previously noted, DOE does not cite any scientific issues in their Motion to Withdraw, but rather reference "scientific advancements." Despite the widely documented lack of scientific or technical issues, it was reported the President told South Carolina Governor Nikki Haley, Yucca Mountain isn't an option because of "safety concerns" in December 2010.⁵⁷

It is extremely concerning to have the President of the United States raise safety issues despite the results of all government conducted scientific and technical evaluations. This is particularly alarming given pending court cases relating to Yucca Mountain brought against the U.S. government. Another political opponent of Yucca Mountain, Senate Majority Leader Reid, said the project is "technically and scientifically unsound,"⁵⁸ again, with no credible scientific evidence.

2.7 The Shutdown of OCRWM

As a part of the Administration's coordinated effort to permanently close Yucca Mountain, DOE announced in the President's FY 2011 budget request its plans to abolish OCRWM by the end of FY 2010. OCRWM was specifically established by the NWPA with a mission to "manage and dispose of high-level radioactive waste and spent nuclear fuel."⁵⁹ Enabled by the failure of the 111th Congress to complete work on the FY2011 budget, DOE proceeded to act on its plans, thus eliminating an office with important programmatic and statutory responsibilities (DOE divided statutory responsibilities amongst various DOE offices, specifically the Offices of Nuclear Energy and Environmental Management). According to the DOE's Inspector General, DOE's move to shut down OCRWM was done in such haste that it did not prepare a formal shutdown plan.⁶⁰

⁵⁶ For full exchange and Secretary Chu's responses to the Committee's Questions for the Record, see Appendix C

⁵⁷ Chebium, Raju, "Nikki Haley and Barack Obama Talk Health Care, Yucca Mountain." December 2, 2010. Available at: <http://www.wltx.com/news/local/story.aspx?storyid=110547&catid=2>

⁵⁸ Rogers, Keith, "House members tour Nevada Yucca Mountain tunnel," *Las Vegas Review Journal*, December 2, 2010. Available at: <http://www.lvrj.com/news/house-members-tour-nevada-yucca-mountain-site-120740349.html?ref=349>

⁵⁹ U.S. Department of Energy, "About OCRWM," Available at: http://www.energy.gov/environment/about_ocrwm.htm.

⁶⁰ "Special Report: Need for Enhanced Surveillance During the Yucca Mountain Project Shut Down," Office of the Inspector General, U.S. Department of Energy, July 2010. Available at: www.ig.energy.gov/documents/OAS-SR-10-01.pdf

Chapter 3. Taxes, Liabilities, and Implications

Beyond the policy and legal repercussions of closing Yucca Mountain, the Obama Administration's actions are causing increasingly severe financial implications for U.S. taxpayers. To date, almost \$15 billion has been spent studying, preparing and advancing to construction of Yucca Mountain. Should the Administration continue down this path, those tax dollars will simply be wasted.



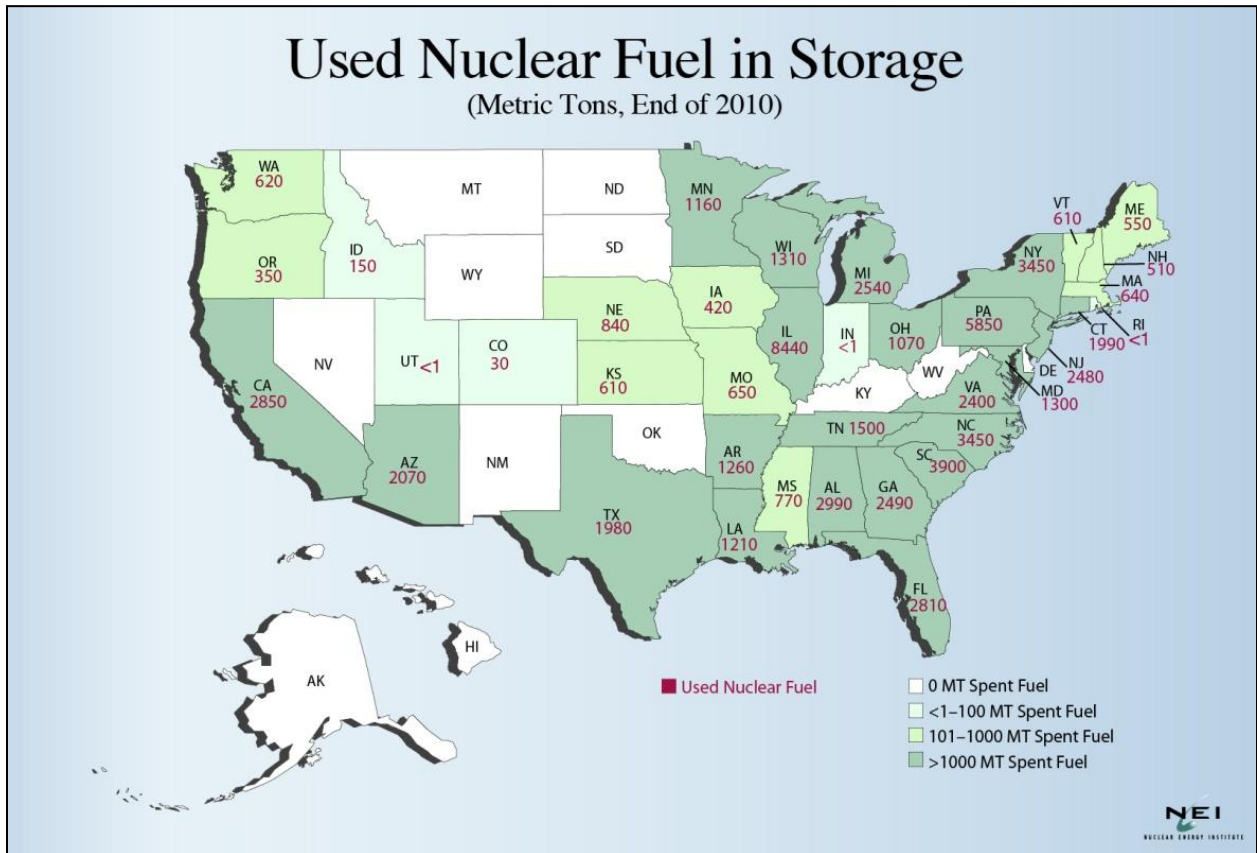
Spent Nuclear Fuel Stored in Dry Casks

Additionally, the NWPB instituted a one mil per kilowatt-hour fee upon nuclear generated electricity to be deposited in the Nuclear Waste Fund (NWF) to pay for costs associated with SNF disposal, specifically Yucca Mountain. This surcharge is passed on to ratepayers. Despite the lack of a permanent repository, ratepayers continue to contribute to the NWF. The Congressional Budget Office estimates the NWF contains over \$25 billion and is accruing at a rate of \$2 billion per year with fees and interest.⁶¹

The lack of a permanent repository places additional burdens on states and localities that currently store high-level radioactive waste. In particular, two states host to DOE facilities that store radioactive waste are directly impacted – Washington, where the nation's largest deposit of

⁶¹ "The Federal Government's Responsibilities and Liabilities Under the Nuclear Waste Policy Act," Congressional Budget Office, July 27, 2010. Available at: www.cbo.gov/ftpdocs/117xx/doc11728/07-27-NuclearWaste_Testimony.pdf

waste is stored at DOE’s Hanford Site, and South Carolina, home of Savannah River Site, that also holds a significant amount of waste produced from nuclear weapons program. Both states are actively pursuing litigation seeking damages from the Federal Government as a consequence of DOE’s inability to accept waste in a permanent repository. Washington and South Carolina are also parties along with Aiken County, SC, the National Association of Regulatory Utility Commissioners, and the Prairie Island Indian Community, in a suit challenging DOE’s authority to withdraw its License Application.⁶² The D.C. Circuit Court heard oral arguments in the case on March 22, 2011, but has yet to issue a ruling.



Commercial Spent Nuclear Fuel Stored in the United States

Taxpayers are also liable for the government’s breach of contract with nuclear generators. The NWPA stipulated the government would assume responsibility for commercially generated spent nuclear fuel by January 31, 1998. Because the government has not fulfilled this obligation, taxpayers are liable for approximately \$12 billion in damages, even if the government began accepting SNF in 2020 at another location, which looks increasingly doubtful. This liability will increase by \$500 million annually thereafter.⁶³ Further, the courts have ruled that the NWF

⁶² See *In re: Aiken County (& Consolidated Cases)*, Nos. 10-1050, 10-1069 & 10-1082 (D.C. Cir.)

⁶³ *Ibid.*

cannot be used to pay for the damages; instead it must come from the Department of Justice's Judgment Fund, exacerbating the financial exposure to taxpayers.⁶⁴

The lack of a permanent repository also raises other issues. For example, NRC is not permitted to license a new reactor without a plan for disposal of SNF, as stipulated in the Standard Contract, restraining the nuclear industry's ability to grow over the long-term. Also of great note are the implications to homeland security and military readiness. In the absence of a permanent repository, more SNF will be stored onsite in spent fuel pools, which a 2005 study by the National Academy of Sciences deemed a credible terrorist threat.⁶⁵

The U.S. Government is also responsible for disposal of nuclear waste generated by the Navy. A March 2011 Government Accountability Office (GAO) report notes penalties of \$28 million annually will be incurred by the taxpayer should DOE not fulfill its obligation with the states of Colorado and Idaho to remove high-level radioactive waste.⁶⁶ Even more concerning is the possibility that Idaho could have the ability to suspend any further shipments from DOE or the Navy to DOE's Idaho site until DOE meets their obligation. This would have severe national security implications and impair the Navy's ability to provide for national defense.

⁶⁴ In 2002 the United States Court of Appeals for the Eleventh Circuit determined that the Nuclear Waste Fund was not available to pay these judgments or to pay settlements. See *Alabama Power Company et. al. v DOE* No. 00-16138 (11th Cir.).

⁶⁵ Wald, Matthew, "Study Finds Vulnerabilities in Pools of Spent Nuclear Fuel," *The New York Times*, April 7, 2005. Available at: <http://www.nytimes.com/2005/04/07/politics/07nuke.html>

⁶⁶ "Better Information Needed on Waste Storage at DOE Sites as a Result of Yucca Mountain Shutdown," Government Accountability Office, March 2011. Available at: www.gao.gov/new.items/d11230.pdf

Chapter 4. The Department of Energy

4.1 Previous Concerns with DOE Decision-making and Project Management

Evaluating DOE's decisions related to major energy projects is not new for the Committee. DOE's decision to restructure the FutureGen program drew the Committee's attention in the 110th Congress. Many of the issues the Committee encountered in its review of that program, as well as its ultimate findings, are relevant to this review as well. In the 2009 report titled *The Passing of FutureGen: How the World's Premier Clean Coal Technology Project Came to be Abandoned by the Department of Energy*, the then majority staff stated:

"DOE was extremely reluctant to produce documents to the Committee so that it could determine exactly how decisions were made concerning FutureGen. Despite numerous requests from the Committee since April 2, 2008, and the threat of a subpoena, the Department has not yet provided a full response."⁶⁷

The majority staff report also found that:

"In abandoning the original concept, the Department of Energy left the country with no coherent strategy for carbon capture and sequestration – despite having many fingers in many pots."⁶⁸

As detailed throughout this report, these experiences and findings with respect to FutureGen are very similar to DOE's decision to terminate the Yucca Mountain Project and nuclear waste management. Despite numerous requests for documents over a two-year span, the Committee has yet to receive a final production of documents. In abandoning Yucca Mountain, the Department of Energy left the country with no coherent strategy for nuclear waste disposal. Although the Administration formed a Blue Ribbon Commission to evaluate alternatives, it was explicitly barred from evaluating the viability of continuing to advance the Yucca Mountain site. Making matters worse, the decision was made prior to any recommendations from the Blue Ribbon Commission.

FINDING #1: A pattern exists whereby DOE makes major policy decisions prior to comprehensive analysis of costs, benefits, and risks.

⁶⁷ "The Passing of FutureGen: How the World's Premier Clean Coal Technology Project Came to be Abandoned by the Department of Energy," House Science and Technology Committee, March 10, 2009.

⁶⁸ Ibid. Note: The Majority Staff's conclusions were supported by the Government Accountability Office report GAO-09-248 (February 2009) which stated: "Contrary to best practices, DOE did not base its decision to restructure FutureGen on a comprehensive analysis of factors, such as associated costs, benefits, and risks."

4.2 Correspondence between the Committee and the Administration

May 7, 2009 – Science and Technology Committee Ranking Member Ralph Hall, Science and Technology Subcommittee on Investigations and Oversight Ranking Member Paul Broun, Energy and Commerce Committee Ranking Member Joe Barton, and Energy and Commerce Subcommittee on Oversight and Investigations Ranking Member Greg Walden to Secretary of Energy Steven Chu.

Members requested responses to numerous questions relating to the Administration’s decision, including the establishment of a Blue Ribbon Commission.⁶⁹ None of the questions posed in the letter were answered in Secretary’s Chu’s June 1, 2009 reply.⁷⁰ Subsequent staff level correspondence on June 18, 2009 confirmed that DOE considered its June 1, 2009 reply responsive to the Members requests, and that DOE did not possess documents responsive to the Members requests. As of February 2, 2010, Secretary Chu still refused to comment on the Blue Ribbon Commission’s charter,⁷¹ although information was eventually revealed in a Press Bulletin on March 2, 2010.⁷²



Energy Secretary Stephen Chu

Members also requested “all documents relating to any legal, technical, or scientific analysis that formed the basis for your decision to re-evaluate nuclear waste disposal alternatives to the proposed Yucca Mountain repository, including, but not limited to, evaluations and recommendations that led you to determine that Yucca Mountain was ‘not an option.’”⁷³ Additionally, Members requested “any analysis of the potential impact that failing to pursue the Yucca Mountain repository may have on the construction of new nuclear power plants, which are essential to providing clean and reliable energy in the future.”⁷⁴

February 3, 2010 – Ranking Members Hall and Broun to Secretary Steven Chu.

Members once again requested explanation and documentation regarding the Administration’s decision, as well as documents related to the establishment of the Blue Ribbon Commission.⁷⁵ Secretary Chu eventually replied to the letter on July 7th, six months later. The only documents provided at that time were the DOE press release dated January 29, 2010, and the BRC charter which was issued publically on March 2, 2010. No other documents were provided.⁷⁶

⁶⁹ Letter from Reps. Hall, Broun, Barton, Walden to Sec. Chu dated May 7, 2009.

⁷⁰ Letter from Sec. Chu to Reps. Hall, Broun, Barton, Walden dated June 1, 2009.

⁷¹ Behr, Peter, “The Administration puts its own stamp on a possible nuclear revival,” New York Times, February 2, 2010. Available at: <http://www.nytimes.com/cwire/2010/02/02/02climatewire-the-administration-puts-its-own-stamp-on-a-p-76078.html>

⁷² Advisory Committee Charter, Blue Ribbon Commission on America’s Nuclear Future, U.S. Department of Energy, March 2, 2010. Available at: http://www.energy.gov/news/documents/BRC_Charter.pdf

⁷³ See Supra 68.

⁷⁴ Ibid.

⁷⁵ Letter from Reps. Hall and Broun to Sec. Chu dated February 3, 2010.

⁷⁶ Letter from Sec. Chu to Reps. Hall and Broun dated July 7, 2010.

June 22, 2010 – Resolution of Inquiry.

On June 22, 2010, Representative Sensenbrenner submitted a Resolution of Inquiry⁷⁷ requesting documents related to DOE's application to foreclose use of Yucca Mountain as a high-level nuclear waste repository.⁷⁸ This resolution was considered by the Committee on Energy and Commerce, pursuant to House rules, on July 19, 2010.⁷⁹ The Energy and Commerce Committee voted to report H. Res. 1466 without recommendation with the understanding that Majority Members would join Rep. Sensenbrenner in requesting documents from the Department. A joint request was never sent.

July 6, 2010 – Ranking Member Hall, Ranking Member Broun, and Select Committee on Energy Independence and Global Warming Ranking Member Sensenbrenner (along with numerous other Senators and Members) to Secretary Chu.

Senators and Members called on the Secretary to halt all efforts to reprogram funds or terminate contracts related to Yucca Mountain. In response to this request to Secretary Chu, DOE General Counsel Scott Blake Harris responded to Members on August 3, 2010.⁸⁰ DOE refused to heed the Congressional request and continued to move forward with the closure of its Yucca Mountain-related activities.

July 20, 2010 – Ranking Member Hall, Ranking Member Sensenbrenner, Ranking Member Broun.

Members once again restated their previous requests. Members also sought additional documents related to 1) the Department's Motion to Withdraw its pending licensing application with prejudice for a permanent geologic repository at Yucca Mountain, Nevada; 2) any decision to terminate, reduce, or limit funding for the Yucca Mountain project; 3) the discontinuation or altering of standard monitoring and data collection at the site; 4) the Department's policies and procedures relating to preserving and archiving documents related to the Yucca Mountain Repository License Application.⁸¹ On July 23, 2010, Assistant Secretary for Congressional and Intergovernmental Affairs Jeffrey Lane replied simply noted "We are in the process of collecting responsive documents and will soon begin to review them."⁸²

⁷⁷ Note: A Resolution of Inquiry (ROI) is procedural options in the House for use by Members seeking information from Federal agencies or the Administration. Authorized under House Rule XIII, Clause 7, this parliamentary tool is considered the proper form to "request" factual information from the President or "direct" information from Agency or Department Heads. Once introduced by a Member, the ROI is referred to the Committee of jurisdiction. Once received, the Committee has 14 legislative days to report the ROI (excluding day of introduction and day of discharge). The Committee may report the ROI favorably, adversely or without recommendation. If the Committee fails to report the ROI within the appropriate time, any Member of the House may offer a Motion to Discharge. If the Motion prevails, the ROI is considered on the House floor under the Hour Rule.

⁷⁸ H.Res 1466, "Of inquiry requesting the President and directing the Secretary of Energy to provide certain documents to the House of Representatives relating to the Department of Energy's application to foreclose use of Yucca Mountain as a high-level nuclear waste repository," June 22, 2010. Available at: <http://www.gpo.gov/fdsys/pkg/BILLS-111hres1466rh/pdf/BILLS-111hres1466rh.pdf>

⁷⁹ House Report 111-550, July 19, 2010.

⁸⁰ Letter from Scott Blake Harris, General Counsel, DOE, to Ranking Member Paul Broun, August 3, 2010.

⁸¹ Letter from Reprs. Hall, Sensenbrenner, and Broun to Sec. Chu dated July 20, 2010.

⁸² Letter from Jeff Lane to Sensenbrenner, July 23, 2010.

February 14, 2011 – Space, Science, and Technology Subcommittee on Investigations and Oversight Committee Chairman Broun to Secretary Chu.

Representative Broun once again reiterated his request for all documents that were previously requested, this time in his new capacity as Chairman of the Subcommittee on Investigations and Oversight of the Committee on Science, Space, and Technology.⁸³ While documents were provided prior to this letter, the majority of those documents were press releases, public reports, and Congressional correspondence already in the public domain. Some documents were, in fact, responsive, but they were limited. DOE did, however, begin producing more substantive documents with a February 28, 2011 reply to Chairman Broun's letter from DOE General Counsel Harris. This response was received three days before Secretary Chu appeared before the Committee on March 3, 2011 to present DOE's FY12 Budget Request.

DOE's responsiveness to Committee requests improved drastically following Chairman Broun's February 14th letter. Unfortunately, a complete production of documents relative to Committee requests has not been received. To its credit, the Department has worked in a collegial fashion to meet the Committee's requests. The Department has notified the Committee that the only documents that have not been provided to the Committee are those with interagency interests, and that they have no schedule for the delivery of those documents because of the uncertainty of the interagency process. The Committee will continue to pursue these documents, but will not delay its review of the Yucca Mountain project.

FINDING #2: Replies to initial inquiries from Members were unresponsive.

FINDING #3: The Administration's establishment of the Blue Ribbon Commission lacked transparency, contrary to established Administration policy.

FINDING #4: No documents were provided to Members that demonstrated that potential impacts on the construction of nuclear power plants were evaluated prior to the decision to terminate the program.

FINDING #5: No documents provided to the Committee support the determination that Yucca was "not an option."

FINDING #6: A final production of documents has not been delivered despite numerous inquiries. No schedule for delivery has been provided. No index of documents withheld has been provided. No claim of privilege has been stated.

⁸³ Letter from Rep. Broun to Sec. Chu dated February 14, 2011.

4.3 Outside Reports and Activities

DOE Inspector General Memo: *Need for Enhanced Surveillance During the Yucca Mountain Project Shut Down* (July 2010)

In a July 21, 2010 Memorandum to the Undersecretary of Energy on the Shutdown of the Yucca Mountain Project, the DOE IG expressed the significance of the Department's decision, noting:

“Other than the termination of the Department's Super Conducting, Super Collider Project in Texas in 1998, we know of no comparable single project termination in the Department's recent history as consequential as Yucca Mountain, given the importance of its intended mission, the massive investment in real and personal property and the development and compilation of huge quantities of Project-related, intellectual property.”⁸⁴

Because of this importance, the DOI IG announced an audit on February 23, 2010 to “determine whether OCRWM had adequately planned for the Project's orderly shutdown.”⁸⁵ Surprisingly, the DOE IG quickly learned that no such plan existed, stating “On March 2, 2010, management informed us that it was in the process of preparing a master plan to manage the shut down process and that it would be completed by the end of March 2010.”⁸⁶ The DOE IG then deferred its audit until DOE completed its plan. DOE never completed this planning. The DOE IG report stated that,

“On June 12, 2010, we met with OCRWM officials to determine the status of the shutdown planning in anticipation of restarting our audit. We were told that the plan was not complete and the events were moving so quickly that no further action on the master plan was contemplated.”⁸⁷

FINDING #7: Despite an explicit commitment from the Department, DOE failed to develop a master plan prior to one of the most consequential decisions in the Department's history.

GAO Report 11-230: *DOE Nuclear Waste: Better Information Needed on Waste Storage at DOE Sites as a Result of Yucca Mountain Shutdown* (March 2011)

According to a March 2011 GAO report,

“[f]ive states have agreements with DOE, and in one case with the Navy, regarding the storage, treatment, or disposal of nuclear waste stored at DOE sites. Only agreements with Colorado and Idaho include deadlines, or milestones, for removing waste from sites

⁸⁴ "Need for Enhanced Surveillance During the Yucca Mountain Project Shut Down," Department of Energy, Office of the Inspector General, July 21, 2010. Available at: <http://www.ig.energy.gov/documents/OAS-SR-10-01.pdf>

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

that may be threatened by a termination of the Yucca Mountain repository program. Under the agreements, DOE and the Navy are expected to remove their spent nuclear fuel from Idaho, and DOE is to remove its fuel from Colorado, by January 1, 2035. If a repository is not available to accept the waste, however, DOE and the Navy could miss these milestones. As a result, the government could face significant penalties—\$60,000 for each day the waste remains in Idaho and \$15,000 for each day the waste remains in Colorado—after January 1, 2035. These penalties could total about \$27.4 million annually. Navy officials told GAO, however, their greater concern is that Idaho might suspend Navy shipments of spent nuclear fuel to the state until the Navy meets its agreement to remove spent nuclear fuel, a suspension that would interfere with the Navy's ability to refuel its nuclear warships."⁸⁸

The report went on to state, "DOE and the Navy have not yet developed plans to mitigate the potential effects of longer storage resulting from a termination of the Yucca Mountain repository."⁸⁹

FINDING #8: DOE's decision to terminate the Yucca Mountain Project leaves the federal government vulnerable to significant financial penalties and could interfere with the Navy's ability to refuel nuclear warships.

FINDING #9: The GAO determined that DOE and the Navy did not develop plans to mitigate the potential effects of longer storage prior to the termination of the Yucca Mountain Project.

GAO Report 11-229: *Commercial Nuclear Waste: Effects of a Termination of the Yucca Mountain Repository Program and Lessons Learned* (April 2011).

In April of 2011, the GAO issued a report on the effects of, and lessons learned from, the termination of the Yucca Mountain Project. One of its findings largely reiterated the DOI IG memorandum from July 2010, which found "DOE did not finalize a plan for shutdown, nor did it identify or assess risks of the shutdown. Both steps are required under federal internal control standards and DOE orders."⁹⁰ The report went also found that "DOE did not cite technical or safety issues" associated with the Yucca Mountain Project," and that "social and political opposition to the permanent repository, not technical issues, is the key obstacle." Similarly, the report also found that "there is no guarantee that a more acceptable or less costly alternative will be identified."⁹¹

⁸⁸ "DOE Nuclear Waste - Better Information Needed on Waste Storage at DOE Sites as a Result of Yucca Mountain Shutdown," U.S. Government Accountability Office, March 2011. Available at: <http://www.gao.gov/new.items/d11230.pdf>

⁸⁹ Ibid.

⁹⁰ "Effects of a Termination of the Yucca Mountain Repository Program and Lessons Learned," U.S. Government Accountability Office, April 2011. Available at: <http://www.gao.gov/new.items/d11229.pdf>

⁹¹ Ibid.

FINDING #10: GAO determined that DOE did not develop a plan for shutdown that could have indentified and assessed risks.

FINDING #11: As part of GAO's investigation, DOE did not cite any technical or safety issues associated with the Yucca Mountain Project.

FINDING #12: GAO found DOE concerns with respect to key issues associated with the Yucca Mountain Project are social and political, not technical.

4.4 Committee Review of Documents

A review of documents provided by the Department of Energy revealed issues associated with scientific integrity, inadequate shutdown planning, rushed document retention, and a lack of a scientific justification for the Department's decision.

4.4.1 Scientific Integrity

Correspondence provided to the Committee revealed several scientific integrity-related issues. Most notable among these were multiple correspondences between Dr. Per Peterson, Department of Nuclear Engineering, University of California, Berkley, and senior Administration officials including Dr. John Holdren, Director, Office of Science and Technology Policy, and Dr. Steven Chu, Secretary, Department of Energy.

Currently a member of the Blue Ribbon Commission, Peterson has written extensively on Yucca Mountain safety issues and the need for the NRC to complete its review of the DOE License Application. In a 2009 report to DOE from Dr. Peterson titled "U.S. nuclear waste policy: scientific integrity, policy, and politics" that was obtained by the Committee, Peterson made the following key points:

The license application that the DOE submitted to the USNRC in June 2008, shows a large margin for compliance with the million-year safety standard establishment by the Environmental Protection Agency (EPA), as shown in Fig. 1.

There is not a major philosophical difference between ignoring scientific evidence to serve ideological predispositions, versus actively suppressing scientific inquiry to serve ideological predispositions. But the second approach causes yet greater damage – the most recent Yucca Mountain appropriations decisions that the U.S. Congress has made did not simply reduce U.S. capacity to evaluate the Yucca Mountain site, they have also almost completely dismantled the U.S. scientific capacity to study any kind of geologic repository.

A robust U.S. policy would allow the USNRC review to continue to completion because it would be technically sound and will provide vital information to inform policy.⁹²

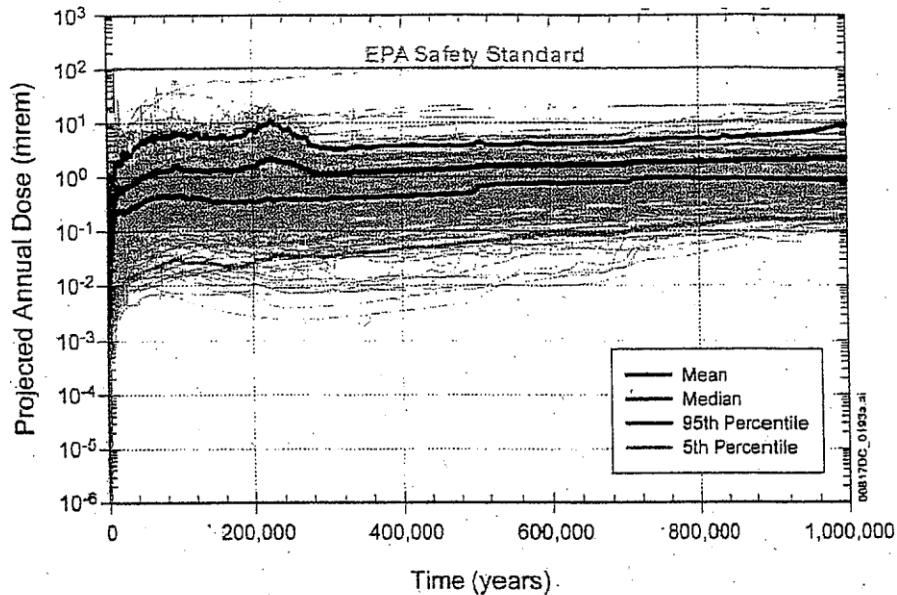


Figure 1. The DOE license application for Yucca Mountain, now under independent technical review by the USNRC, shows a large margin for compliance with the million-year EPA safety standard.

Peterson warned Administration officials, beginning as early as October 2008, of scientific integrity and data retention issues that would arise if the Obama Administration were to withdraw the Yucca Mountain license application. Additional emails sent during this process reinforce this concern.⁹³

- Email from Per Peterson to Warren Miller, Assistant Secretary for Nuclear Energy, DOE Office of Nuclear Energy, July 14, 2009, Subject: RE: Call me please.

“I started corresponding with John Holdren (in his position leading the National Commission on Energy Policy) back in October, 2008, about the scientific integrity problem that would emerge if a new Obama administration were to withdraw the Yucca Mountain license application and thus stop the independent NRC technical review of that application. I recommend that instead, the administration focus on fixing the Nuclear Waste Policy Act, which is highly flawed.”

- Email from Warren Miller to Kristina Johnson, Under Secretary for Energy, DOE, Chris Kouts Principal Deputy Director, DOE Office of Civilian Radioactive Waste Management, and Peter Lyons Principal Deputy Assistant Secretary, DOE Office of Nuclear Energy, October 12, 2009, Subject: Fw: FY 11 OCRWM Budget.

⁹² See Appendix E.

⁹³ Ibid.

“Per is a distinguished member of the academic community. Steven Chu, John Holdren (and I) very much trust his judgment. I think we should take his advice very, very seriously.”

- Email from Per Peterson to John Holdren, Director, Office of Science and Technology Policy, and Steve Chu, Secretary, Department of Energy, October 12, 2009, Subject: FY 11 OCRWM Budget.

“Senator Reid announced at the end of the July that the administration will zero funding for the review of the Yucca Mountain license application. While stopping the license review would be one thing, the larger question relates to the fate of the scientific and technical information that supports the license application. If Quality Assurance (QA) controls are stopped on the electronic records, long-term corrosion experiments stopped, and samples in storage discarded, the scientific data base that supports the current license application and understanding of the site would be destroyed. The analogy that is emerging is that the administration might “burn the books” on the scientific work that has been done for Yucca Mountain. The loss of YM scientific and technical data would be pretty clearly analogous to the loss of knowledge that occurred with the burning of the scrolls in the Library of Alexandria (it might also invite more unsavory, if less accurate, analogies to book burning in Germany in 1933). Overall, it’s a bad idea to allow this base of U.S. repository scientific and technical knowledge to be destroyed. My recommendation is that even though the FY 11 budget request may stop the current license application review, that the budget contain substantial funding to OCRWM and some to NRC and [Nuclear Waste Technical Review Board] to sustain knowledge and capability in repository science. It would also be great if the stated administration policy would be to sustain OCRWM knowledge and capability until congress amends the NWPS to provide the DOE with guidance on how to move forward with management of spent fuel and high level waste.”

FINDING #13: On multiple occasions, scientific integrity issues regarding Yucca Mountain were brought to the attention of the White House Science Advisor and Secretary of Energy prior to the Administration’s decision to shutter the program.

4.4.2 Shutdown Planning and the Retention of Documents and Science

Numerous documents obtained by the Committee pertain to the Department’s attempts to plan for the shutdown of the Yucca Mountain Project beginning in the fall of 2009. These documents show a Department genuinely concerned with data collection and document retention but also illustrate the negative impacts and pressure generated by the rushed nature and lack of planning associated with the shutdown decision.

- Email from Peter Lyons to Asaf Nagler, November 15, 2009, Subject: Re: Yucca Mtng

[Responding to a request for items to be discussed at a Yucca Meeting] “Need to protect nations [sic] technical investment in repository science-both knowledge and people.”⁹⁴

- Email from Dave Zabransky to All OCRWM, May 20, 2010, Subject: Further Guidance on the Retention of Documents

“All OCRWM personnel are instructed to continue to refrain from the destruction of any documents or copies of documents that relate to Yucca Mountain and any of the science relating to storage or disposal of high-level waste or spent fuel, even if permitted under applicable retention schedules. This instruction is to be carried through to all contractors performing services for OCRWM, including other agencies performing services under interagency agreements. During the recent hiatus of shutdown activities, we were already refraining from destruction of documents or copies of documents. This confirms that this restriction remains in effect.”

Despite the best intentions of those involved, emails and memos obtained by the Committee also shed light on the complexity of tasks, particularly given the tight deadlines and limited planning involved in the endeavor. During the spring of 2010, senior-level meeting notes show that sample disposition and file maintenance issues were still not resolved, a records management plan was not finalized, and funding streams for the execution of the work were still uncertain.⁹⁵

Several emails obtained by the Committee highlight these uncertainties.

- Email from JW to AP, RS, KD, LD [All redacted], May 11, 2011, Subject: RE: Yucca Mountain Withdrawal of Work

[Responding to a request for a shutdown plan and a termination of task activities within six days] “As we discussed, I think the turn-around time is unreasonable (i.e., a deliverable of this magnitude and importance in less than a week). I understand that Sandia may have done some preliminary work but still don’t think the timing is adequate.”

- Email from EB to MW, SO, CP, RW [All redacted], June 15, 2010, Subject: GAO Interview

“As you know, one of the main concerns we have is that we’re not being allowed to have sufficient time to archive the technical information supporting the postclosure technical baseline in a manner that would be conducive to retrieval and use of the information within a reasonable time.”

⁹⁴ Ibid.

⁹⁵ Ibid.

- Email from AP to KD, JW, MM, and MR [All redacted], June 29, 2010, Subject: FW: ASLB Denies DOE petition to Withdraw LA

“Do not know what impact this will have but I am more concerned with us not allowing Sandia to properly archive information based on direction from OCRWM.”

Additional correspondence also points to confusion over what tasks should continue for document preservation, and how it will be funded, up until July 2010.⁹⁶

FINDING #14: Despite the agencies’ best attempts to continue data collection and preserve scientific and technical records, the Department did not finalize and fund a records management plan in a timely fashion. Because of this rushed process, uncertainty and questions associated with data retention remain an area of concern to the Committee.

4.4.3 Lack of Scientific or Technical Justification to Determine YMP is Not Safe or Viable

For over two years, the Committee sought documents related to the decision to terminate the Yucca Mountain Project. Additionally, Committee Members requested, on multiple occasions, documents related to the scientific and technical determination that the Yucca Mountain Project was “not a viable option.” Over this time, staff reviewed thousands of pages of documents provided by DOE.

FINDING #15: Not a single document provided to the Committee by the Department of Energy found that the Yucca Mountain Project was not safe or viable, contrary to the President, and the Department of Energy.

⁹⁶ Ibid.

Chapter 5. The Nuclear Regulatory Commission

Given the Administration's repeated statements regarding the need to find a safe, long-term nuclear waste disposal facility, the 695-page Volume III of the Safety Evaluation Report (SER) that focuses on post-closure safety provides the most relevant and detailed information to determine whether sound science guided the decision to terminate the Yucca Mountain Project. Despite years of work by his staff, the Chairman of the Nuclear Regulatory Commission has obstructed the approval of the SER or to release it to the public to allow all Americans to judge for themselves whether sound science was used as a basis to terminate the Yucca Mountain Project. This chapter summarizes Committee correspondence with the NRC and reviews of materials provided as a result of this correspondence.

5.1 Correspondence between Committee Members and the NRC

July 15, 2010 – Fourteen Members of Congress (including Science and Technology Committee Members Sensenbrenner, Inglis, Broun, and Olson) to Chairman Jaczko

Fourteen Members of Congress wrote to the NRC expressing support for the ASLB's denial of DOE's Motion to Withdraw the License Application. Members reaffirmed Congressional intent to locate a national geologic repository at Yucca Mountain and called for the Commission to "make all relevant documents related to DOE's Motion to Withdraw public."⁹⁷ On July 30, 2010, Annette Vietti-Cook, the Secretary of the NRC, responded, "given the pendency of the adjudicatory proceeding, therefore, the Commission cannot discuss or comment on issues involved in this matter."⁹⁸ No documents were released.

October 13, 2010 – Ranking Member Hall, Ranking Member Sensenbrenner, Ranking Member Barton, and Natural Resources Committee Ranking Member Doc Hastings to Chairman Jaczko

Four House Committee Ranking Members expressed concern regarding the budget directive to bring the High-Level Waste Program, including NRC's review of the license application and preparation of the SER, to a close. The Members also requested a response to six separate questions, including the actions taken to terminate review of the License Application and specific communication on the matter between the NRC, Secretary Chu, Majority Leader Reid, and the White House.⁹⁹ Chairman Jaczko responded on October 27, 2010 but did not provide the communications, as requested.¹⁰⁰

⁹⁷ Letter from Reps. Sensenbrenner, Inglis, Wilson, Barrett, McMorris Rodgers, Hastings, Shimkus, Bonner, Manzullo, LaTourette, Terry, Broun, Olson and Rehberg to NRC Chairman Jaczko, July 15, 2010.

⁹⁸ Letter from Annette L. Vietti-Cook to Rep. Sensenbrenner, July 30, 2010.

⁹⁹ Letter from Reps. Hall, Sensenbrenner, Barton, and Hastings to Chairman Jaczko, October 13, 2010.

¹⁰⁰ Letter from Chairman Jaczko to Reps. Hall, Sensenbrenner, Barton, and Hastings, October 27, 2010.

November 19, 2010 – Ranking Member Sensenbrenner, Ranking Member Hastings, and Oversight and Government Reform Committee Ranking Member Darrell Issa to Chairman Jaczko

Members requested the release of NRC’s decision on the ASLB’s denial of the Motion to Withdraw. The communication highlighted the votes filed by the four participating Commissioners and neglect by Chairman Jaczko to affirm the order.¹⁰¹ The letter requested Chairman Jaczko’s plans, including a specific date for issuing the final order. On December 6, 2010, NRC Secretary Vietti-Cook again responded, stating “given that the adjudicatory process is ongoing, the Commission itself cannot discuss or comment on the issues involved. No specific date has been established for completion of the matter.”¹⁰² No documents were released.

February 10, 2011 – Science, Space, and Technology Committee Chairman Ralph Hall, Science, Space, and Technology Committee Vice-Chairman James Sensenbrenner, Subcommittee Chairman Broun, and Science, Space, and Technology Subcommittee on Energy and Environment Chairman Andy Harris to Chairman Jaczko, NRC Commissioners Magwood, Svinicki, Apostolakis, and Ostendorff.

In the spirit of openness and transparency, Members requested release of SER Volume III in light of the directive to halt all activities in the High-Level Waste Program. Members also requested all documents relating to the release of the SER.¹⁰³ Commissioners Apostolakis, Ostendorff, Magwood, and Svinicki replied on February 18, 23, 24 and 25, respectively. Chairman Jaczko responded on March 4, stating a redacted version of SER Volume III was released on February 17 in response to a Freedom of Information Act request from an outside organization.¹⁰⁴ The letter argued against the release of the unredacted document. No documents relating to the release of the SER were provided to the Committee.

March 10, 2011 – Chairman Hall, Vice-Chairman Sensenbrenner, Chairman Broun, Chairman Harris to Chairman Jaczko

Members reiterated the call to finalize SER Volume III and release the document. The letter repeated the request for all documents and communication relating to the completion and release of SER Volume III, the February 4, 2011 memorandum titled “Update on the Yucca Mountain Program,” and included six explicit questions regarding the status of SER Volume III and closure of the HLW program.¹⁰⁵ On March 11, a redacted version of the “Update on the Yucca Mountain Program” memorandum was publicly released. The Committee Chairmen received a response from Chairman Jaczko on April 28, which stated, “[n]otwithstanding my reservations a majority of the Commission is willing to provide unredacted copies in response to Congressional Committee requests.”¹⁰⁶ On April 29, the Committee received an unredacted copy of SER Volume III. No other document production was included, as called for in both the February 10 and March 10 letters. The response to Committee Members from Chairman Jaczko said the

¹⁰¹ Letter from Reps. Hastings, Issa, and Sensenbrenner to Chairman Jaczko, November 19, 2010.

¹⁰² Letter from Annette L. Vietti-Cook to Reps Sensenbrenner, Hastings, and Issa, December 6, 2010.

¹⁰³ Letter from Reps. Hall, Sensenbrenner, Broun, and Harris to NRC Commissioners, February 10, 2011.

¹⁰⁴ Letter from Chairman Jaczko to Reps. Hall, Sensenbrenner, Broun, and Harris, March 4, 2011.

¹⁰⁵ Letter from Reps. Hall, Sensenbrenner, Broun, and Harris to Chairman Jaczko, March 10, 2011.

¹⁰⁶ Letter from Chairman Jaczko to Reps. Hall, Sensenbrenner, Broun, and Harris, April 28, 2011.

Commission “is currently identifying documents related to these matters.” As of June 7, 2011, the Committee has yet to receive any production of documents. The Committee will continue to pursue these documents, but will not delay its review of NRC’s activities relating to the SER and HLW Program.

The unredacted version of SER Volume II was labeled “not for public disclosure.” However, a prudential determination was made that certain aspects of SER Volume III are important to advancing the Committee’s aforementioned oversight authorities, responsibilities, and interest in advancing sound scientifically-based policymaking. Accordingly, key portions of SER Volume III are described below.

FINDING # 16: The NRC was non-responsive to Committee requests for the complete records upon which NRC Commissioners have and will be making critical decisions. With respect to outstanding requests, no schedule for delivery has been provided. No index of documents withheld has been provided. No claim of privilege has been stated.

5.2 Committee Review of Documents

The Committee thoroughly reviewed an unredacted version of the 695-page preliminary SER III as well as other related NRC documents. Committee staff note that the impressive thoroughness and technical detail evident throughout the SER reflect highly on the expertise and professionalism of NRC staff that worked so long to prepare it.

5.2.1 Volume III of the Safety Evaluation Report

A key concern with the disposal of high level nuclear waste is the long term safety of the material after the storage facility is closed, leaving the radioactive waste to decay over time into non-radioactive elements. As previously noted, the long-term safety issue has been highlighted by the Obama Administration as a key issue to determine where long term storage of nuclear waste should be located. Storage risks include improper loading of the nuclear waste into storage containers, improper manufacture of these storage containers, and water or other intrusions into the facility risk compromising the ability of the material to decay. As part of the effort to determine the suitability



NRC Chairman Gregory Jaczko

of Yucca Mountain to store high-level radioactive waste, DOE engaged in a multi-year effort to gather comprehensive data and scientific information on the site and its associated risk factors.

This effort culminated in the Safety Analysis Report (SAR), compiled by DOE and last updated by staff in February 2009. The SAR was then submitted to the Nuclear Regulatory Commission

by DOE along with its Yucca Mountain License Application. The NRC spent over two years reviewing the Safety Analysis Report to assess the assumptions, plans, and overall technical rigor associated with the planned Yucca Mountain project. This NRC staff effort culminated in the Safety Evaluation Report comprising the following five volumes:

- I. General Information
- II. Repository Safety Before Permanent Closure
- III. Repository Safety After Permanent Closure
- IV. Administrative and Programmatic Requirements
- V. License Specifications

NRC developed a review schedule for each of the respective SER volumes. The schedule inserted below (now a public document released by the NRC) was included in a March 30, 2010 NRC memorandum on the status of the High-Level Waste Program. According to this schedule, all five volumes would have been finalized and published by March 2011 if Chairman Jaczko had not halted work on the SER volumes.

~~OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION~~

TENTATIVE COMPLETION DATES FOR SAFETY EVALUATION REPORT VOLUMES
(Milestones to be completed no later than dates shown)

SER Volume Number	Volume 1 General Information	Volume 2* Preclosure	Volume 3* Postclosure	Volume 4* Administrative/ Programmatic	Volume 5* License Specifications
HLWRS Staff completes text and Executive Summary	04/23/2010	09/21/2010	06/14/2010	08/5/2010	09/30/2010
HLWRS Management and OGC Volume Review Complete	06/7/2010	11/3/2010	07/27/2010	09/17/2010	11/15/2010
Resolve Comments and Complete Review by Technical Editor	07/6/2010	12/03/2010	08/24/2010	10/18/2010	12/14/2010
OGC Complete Legal Review	07/20/2010	12/17/2010	09/08/2010	11/01/2010	01/13/2011
NMSS Director Review and Concurrence	07/27/2010	01/04/2011	09/22/2010	11/16/2010	01/27/2011
Final OGC Review Complete with "No Legal Objection"	08/03/2010	01/18/2011	10/06/2010	12/01/2010	02/10/2011
Publication of Final SER Volume	08/31/2010	03/01/2011	11/19/2010	01/14/2011	03/24/2011

*Work on these volumes will be discontinued once FY 2010 funds are exhausted

ENCLOSURE 2

~~OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION~~

5.2.2 Safety Evaluation Report Volume III Content

In its executive summary, SER III described its objective as documenting “the staff’s evaluation to determine whether the proposed repository design for Yucca Mountain will comply with the technical criteria and post-closure public health and environmental standards that apply after the repository is permanently closed.” The report went on to note that in arriving at that determination, the NRC must consider “whether the site and design comply with the performance objectives and requirements contained in NRC’s regulations at 10 CFR Part 63, Subparts E and L.”

The preliminary staff draft was submitted to the Director of the Office of Nuclear Material Safety and Safeguards on July 15, 2010 for review and approval. However, it appears no action was taken on Volume III from July through October, when it was directed to bring the HLW program to an orderly close.

The specific safety issues studied in detail to support this review included:

- Short-term atmospheric changes to the desert environment
- Long-term atmospheric changes to the desert environment
- Volcanic activity
- Earthquakes
- Meteor impacts
- Improper manufacture of waste packages
- Improper loading of waste packages
- Drip-shield corrosion
- Drip-shield failure
- Human intrusion post-closure

“Legitimate scientific questions have been raised about the safety of storing spent nuclear fuel at this location.”

– Letter from Senator Barack Obama to Senator Harry Reid and Barbara Boxer, October, 2007

Each of these factors were studied in depth by both DOE and NRC. The DOE SAR determined—and the NRC staff SER III confirmed—that they have no significant impact on the long-term safety of the facility.

For example, DOE staff used risk analysis to determine what would happen as a result of water that might seep through the desert floor. DOE estimated that for the first 10,000 years, the limited amount of rain that falls on the site will evaporate by the time it reaches the waste containers due to heat given off by the decaying waste. Beyond the first 10,000 years, the engineered barrier system composed of titanium drip shields will divert away any water that seeps in from above. The NRC staff review concluded that DOE acceptably demonstrated these natural and engineered barriers work together to protect groundwater resources in the vicinity of Yucca Mountain.

The preliminary SER III undertook similar in-depth reviews to determine, for example, potential radiologic exposure if people in the far distant future “unwittingly drill into the repository without realizing the repository is there.” According to the SER, DOE selected 200,000 years as a conservative assumption of the earliest time the waste package could degrade enough so that an intrusion would occur without drillers recognizing it. This test also passed, with NRC staff accepting DOE’s estimate that the peak dose from such human intrusion to be 0.0001 mSv per year—nearly 10,000 times below the regulatory threshold.

Overall, the Nuclear Regulatory Commission staff made over 1500 findings related to the scientific and technical research efforts of the Department of Energy. In their comments, NRC staff agreed 98.5% of the time resulting in the conclusion section listed at the beginning of this Committee report. The remaining 1.5 percent did not impact the NRC staff’s overall conclusions, which found that DOE’s Yucca Mountain License Application complies with applicable NRC safety requirements, including those related to human health and groundwater protection, and the specific performance objectives called for in NRC regulations for disposal of high-level radioactive wastes at Yucca Mountain (10 CFR 63.113-115).

“After spending billions of dollars on the Yucca Mountain Project, there are still significant questions about whether nuclear waste can be safely stored there.”

– Senator Barack Obama, May 2007

FINDING #17: Not a single document provided to the Committee by the Nuclear Regulatory Commission found that the Yucca Mountain Project was not safe or viable.

FINDING #18: The NRC staff review of DOE’s Yucca Mountain License Application detailed in SER III agreed overwhelmingly with DOE on the scientific and technical issues associated with the site, ultimately concluding that the application complies with applicable NRC safety regulations necessary for the site to proceed to licensing for construction.

5.2.3 “Update on the Yucca Mountain Program” Memorandum

On March 11, 2011, NRC placed two redacted memos—both of which were requested by the Committee—in its publicly-available “ADAMS” database.¹⁰⁷ The memos consisted of a March 30, 2010 memo titled, “Plans for the High-Level Waste Repository Program” and a February 4, 2011 memo titled “Update on the Yucca Mountain Program.”¹⁰⁸ The purpose of the February 4, 2011 memo was to “describe the status of the Yucca Mountain Program,” in light of the

¹⁰⁷ Available at: <http://www.nrc.gov/reading-rm/adams.html#web-based-adams>

¹⁰⁸ Memorandum to Chairman Jaczko, Commissioner Svinicki, Commissioner Apostolaki, Commissioner Magwood, and Commissioner Ostendorff from Catherine Haney, titled “Update on the Yucca Mountain Program,” February 4, 2011. See Appendix E

transition to close the NRC staff safety review of the License Application. The memo was addressed to the five Commissioners from Catherine Haney, Director of the Office of Nuclear Material Safety and Safeguards (NMSS).

Director Haney described the activities associated with closure of the review of the LA and accompanying actions. For example, the memo notes that, since the October 1, 2010, NRC staff focused solely on converting its preparation of the safety evaluation reports into technical documents and that the reports “will contain no staff findings of regulatory compliance.”¹⁰⁹ Absent regulatory findings, the technical review lacks context and does not provide value.

Notably, three NRC staff filed non-concurrences on the memorandum, highlighting areas of disagreement with the contents of the memo. Aby Mohseni, Deputy Director for the Licensing and Inspection Directorate in the Division of the High-level Waste Repository Safety, submitted a non-concurrence taking issue with the CR budget guidance, directed by Chairman Jaczko. Mohseni’s objection states:

Although the Commission memorandum describes the current status of the program, it also addresses a path forward that seems to me to contain policy issues that require Commission direction or guidance. For example, whereas the application of Nuclear Waste Funds in FY 2011 was only authorized for orderly shutdown activities under a CR guidance and as specifically directed by the Chairman, the ongoing ASLB hearings require that those funds also support legal activities in ongoing Yucca Mountain licensing proceedings. If there are no constraints in using FY2011 or carryover NWF monies to support licensing activities then it would be a policy issue to direct the staff to apply resources to orderly shutdown instead of completing and issuing the remaining SER volumes, especially since the Commission has not reversed the ASLB’s decision that denied DOE’s motion to withdraw its application.

Director Haney’s response to Mr. Mohseni dismissed the issue, noting “the memo was not intended to raise policy issues” and refers to the lack of quorum to consider Commissioner Ostendorff’s request for full Commission consideration of the CR budget directive. However, the inconsistent logic of the Chairman was noticed by NRC staff.

FINDING #19: Chairman Jaczko inconsistently and arbitrarily substituted his own judgment on key policy decisions more appropriately considered and decided before the full Commission. In doing so, he manipulated process to achieve his desired end: closure of the High-Level Waste Program.

The remaining two non-concurrences directly addressed the handling of the SER and shutdown of the HLW program. Dr. Janet Kotra, Senior Project Manager at Office of Nuclear Material Safety and Safeguards (NMSS), and her supervisor, Dr. King Stablein, Branch Chief for the NMSS, authored extensive opinions highlighting their disagreement with the final content of the memorandum. Dr. Kotra detailed the timeline and motivations behind NRC directives which stated, “[w]hen, on June 14, 2010, the Chairman ordered the Director to postpone issuance of

¹⁰⁹ Ibid.

Safety Evaluation Report Volumes 1 and 3, [High-Level Radioactive Waste] and NMSS managers became concerned the entire Commission may not be fully aware of the policy, legal and budgetary consequences of such redirection.” She continued:

“I was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed. Later, in September, it became clear that, rather than postpone issuances of individual SER volumes, the Chairman’s intent was to terminate the staff’s safety review altogether. Using the continuing resolution as justification, the Chairman, through [Office of Executive Director of Operations] and the [Chief Financial Officer], told staff that all work on the SER must stop, including Volume 3 on post-closure safety, which was already complete, and undergoing management review...[The Chairman] explained that the decision to shut down the staff’s review of the application was his alone and that staff should move to orderly closure of NRC’s Yucca Mountain program.”

Dr. Stablein reiterated this point, saying, “the Chairman unilaterally brought development of the SER to a halt” and “it was pointed out to [Chairman Jaczko] that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of [NWF] resources and at the same time would give the Nation the benefit of an independent regulator’s evaluation of the Yucca Mountain application.” Internally, Chairman Jaczko took direct credit for ending the Yucca Mountain review, while he externally stated he was simply following broad, established NRC guidance.

FINDING #20: Chairman Jaczko unilaterally decided and directed NRC staff to discontinue work on the SER.

5.3 Slow-Walking of the ASLB Decision

On June 29, 2010, the Nuclear Regulatory Commission’s Atomic Safety and Licensing Board rejected DOE’s Motion to Withdraw the License Application.¹¹⁰ On June 30, the Secretary of the NRC issued an order to invite briefs as to whether the Commission should review the appeal, and reverse or uphold the ASLB order.¹¹¹

On July 15, NRC Commissioner Apostolakis recused himself from consideration of the order due to his work with Sandia National Laboratories, that reviewed the adequacy of the long-term performance assessment of Yucca Mountain.¹¹² Commissioner Apostolakis’ recusal left the remaining four Commissioners to rule on the ASLB’s order.

Commissioners Svinicki, Ostendorff, and Magwood filed their votes on the matter on August 25, 26, and September 15, respectively. Chairman Jaczko voted initially on August 25, then

¹¹⁰ NRC ASLB, Memorandum and Order, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (June 29, 2010)

¹¹¹ NRC Secretary, Order of the Secretary, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (June 30, 2010)

¹¹² NRC, Notice of Recusal, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (July 15, 2010)

withdrew his vote and resubmitted his vote again on October 29.¹¹³ The votes are filed with the Secretary of the NRC; however, Chairman Jaczko has neglected to schedule a formal meeting to register the Commissioners' votes. At a May 4, 2011 Congressional hearing,¹¹⁴ Commissioners Svinicki, Ostendorff, and Magwood noted their positions have not changed, which raises the question as to the intention behind Chairman Jaczko's refusal to rule on the ASLB's decision.

FINDING #21: NRC Chairman Jaczko continues to block consideration of ASLB's decision to deny DOE's Motion to Withdraw the License Application, now almost a full year removed from the decision and over nine months since Commissioners filed their votes.

5.4 Internal Disputes over NRC's Closure of the High-Level Waste Program

Chairman Jaczko's October directive to bring NRC's HLW program to closure raised concerns with his fellow Commissioners. Chairman Jaczko dismissed Commissioner Ostendorff's request for the full Commission to consider the budget memo ordering all staff work for the HLW program to be directed to an "orderly closure." This tension was reiterated by Commissioner Svinicki.

In response to Congressional correspondence between Select Committee on Energy Independence and Global Warming Ranking Member Sensenbrenner and Chairman Jaczko, Commissioner Svinicki sent a letter expressing her explicit disapproval with Chairman Jaczko's characterization of the budget directive.¹¹⁵ She took particular issue with the Chairman's claim NRC was simply "following established Commission policy to begin to close out the HLW program."¹¹⁶

Commissioner Svinicki's letter highlights the differing conditions upon which the FY 2011 budget request was submitted in January 2010 and the circumstances the NRC was facing nine months later. She wrote:

¹¹³ Letter from Kristine Svinicki, William Ostendorff, and William Magwood, to Senator James Inhofe, November 2010. Available at: http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=e70db547-7058-4f1f-aa27-87d80de5f2e9

¹¹⁴ Committee on Energy and Commerce, Subcommittee on Energy and Power, Subcommittee on Environment and Economy, "The Role of the Nuclear Regulatory Commission in America's Energy Future," May 4, 2011

¹¹⁵ Letter from Commissioner Svinicki to Rep. Sensenbrenner, November 1, 2010.

¹¹⁶ Ibid.

“When the Commission voted to approve budget justification language related to NRC’s proposed HLW activities for FY 2011, a majority of the Commission’s members supported language stipulating that orderly closure of the program activities would occur “[u]pon the withdrawal or suspension of the licensing review.” The budget justification submitted to the Congress, and pending there now, was modified to include this language. These precursors have not occurred and an adjudicatory appeal related to DOE’s request to withdraw its application lies unresolved before the Commission, making the orderly closure of NRC’s program, in my view, grossly premature.”¹¹⁷

FINDING #22: Chairman Jaczko neglected to consider legitimate concerns raised by fellow Commissioners that should be resolved through an open and transparent decision-making process.

¹¹⁷ Ibid.

Chapter 6. Summary and Conclusions

The Committee undertook this study to determine the impact of the efforts by the Obama Administration to terminate the Yucca Mountain Project. Described as the most studied piece of ground on the world, Yucca Mountain was determined by a rigorous review process using sound science to be an appropriate permanent geologic repository for high-level radioactive waste. At the beginning of the Administration, President Obama committed to using sound science to develop federal policies.

Yet even after a multi-year review of the Yucca Mountain Project by the Nuclear Regulatory Commission that agreed with over 98.5 percent of the findings of the Department of Energy, the Obama Administration continued efforts to terminate the Project without stating any scientific basis to do so. This decision not only violated the President's own highly promoted principles and directives on scientific integrity, transparency, and openness, it has increased taxpayer liabilities under the Nuclear Waste Policy Act, left nuclear waste sitting at reactor sites across the country with no plan for disposal, and ultimately threatened the long-term potential of nuclear power to meet America's growing energy demands with safe, clean, and affordable baseload electricity.

After summarizing the history of the Yucca Mountain Project and the history of the Committee's oversight, this report includes copies of key emails and documents related to the termination as well as a series of Committee findings. Currently, the U.S. has no long term plan to store nuclear waste leaving it to collect at numerous sites across America.

Appendix A. Acronyms

ASLB	Atomic Safety and Licensing Board
BRC	Blue Ribbon Commission on America's Nuclear Future
DOE	Department of Energy
EIS	Environmental Impact Statement
FY	Fiscal Year
GAO	Government Accountability Office
HLW	High-level Waste
IG	Inspector General
LA	Department of Energy's License Application for a High-Level Waste
NMSS	Nuclear Materials Safety and Safeguards
NRC	Nuclear Regulatory Commission
NWF	Nuclear Waste Fund
NWPA	Nuclear Waste Policy Act of 1982
OCRWM	Office of Civilian Radioactive Waste Management
OSTP	Office of Science and Technology Policy
SER	Safety Evaluation Report
SNF	Spent Nuclear Fuel

Appendix B. Science, Space, and Technology Committee Hearings on Yucca Mountain and Radioactive Waste Management

November 6, 1985

Nuclear Waste Policy Act of 1982: Progress And Problems

March 4, 1986

Fiscal Year 1986 Department of Energy Authorization

July 22, 1986

Nuclear Waste Policy Act: Current Status and Future Options

March 19, 1987

Fiscal Year 1988 Department of Energy Authorization

February 6, 1992

Fiscal Year 1993 Department of Energy Authorization

April 29, 1993

Nuclear Energy

November 8, 1993

Spent Fuel Containers

June 16, 2005

Nuclear Fuel Reprocessing

http://commdocs.house.gov/committees/science/hsy21711.000/hsy21711_0.htm

July 12, 2005

Economic Aspects Of Nuclear Fuel Reprocessing

<http://www.access.gpo.gov/congress/house/pdf/109hrg/22295.pdf>

April 6, 2006

Assessing The Goals, Schedule, And Costs Of The Global Nuclear Energy Partnership

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:26799.wais

April 23, 2008

Opportunities And Challenges For Nuclear Power

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:41798.wais

June 17, 2009

Advancing Technology For Nuclear Fuel Recycling: What Should Our Research, Development, And Demonstrations Strategy Be?

<http://gop.science.house.gov/Hearings/Detail.aspx?ID=145>

March 3, 2010

The Department of Energy Fiscal Year 2011 Research and Development Budget Proposal

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:55839.wais

May 19, 2010

Charting The Course For American Nuclear Technology: Evaluating The Department of Energy's Nuclear Energy Research And Development Roadmap

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:57172.wais

Appendix C. Portions of the March 3, 2010 Science and Technology Committee hearing with Secretary Chu and related Questions for the Record

Mr. Diaz-Balart. Thank you, Mr. Chairman. Very well put. Thank you, Mr. Secretary. Thank you for your service. I have two questions. Really, one should be relatively quick. Yucca Mountain, specifically what scientific analysis was used to determine that scientifically that was no longer the place to do it and where is it? In other words, was there a deep scientific analysis, a group of scientists got together, they did a report, a study, where is it, who did it?

Secretary Chu. No, I believe there was no--sorry. Let me rephrase that. I believe there is no scientific group that got together and did that.

Mr. Diaz-Balart. There was no scientific analysis to determine that?

Secretary Chu. No, there is scientific analysis, but specific to your question, there was no group that was formed that did that.

Mr. Diaz-Balart. Well, what scientific analysis? Who made the--who did the scientific analysis to determine that and where is that analysis or was it--how was that decision made scientifically? I am talking about, what was the scientific analysis behind the decision? Remember, the President said he wanted to bring science into its rightful place, and I am paraphrasing. Where is the scientific analysis and who made it?

Secretary Chu. Well, there are a number of things. As the project unfolded over the 25 years, there was growing realization that there were issues. The original design, for example, there was a realization--so bits of information were coming along at the time and so, for example, there was a realization that the natural geography wasn't enough, you needed a titanium shield that would be many, many billions of dollars more in order to protect the water influx into it. So these were things--so to the best of my knowledge, more and more mounting issues were growing.

Mr. Diaz-Balart. Mr. Secretary, and again I apologize. I do have to rush because we are running out of time. I apologize. But here is the issue. I mean, look, there was a decision made to withdraw that application so where was the scientific analysis that determined that? Where is it? In other words, we know there are a million issues in all this stuff. There are a million issues on both sides. But there was a decision made to withdraw the application. Where is the scientific analysis to do that?

Secretary Chu. I would be glad to give you some of the things over the period of years that were growing concerns, but in the end, as I said, let us look forward. There are, I believe, much better options today.

Mr. Diaz-Balart. I understand that, but a decision was made, and what I am hearing from you, sir, is that there was no scientific analysis made, that things had been heard in the past and therefore hey, let us just do it. There was no specific scientific analysis made to make this decision is what I am hearing.

Secretary Chu. Well, no. What you asked is, was there a----

Mr. Diaz-Balart. Specific scientific analysis.

Secretary Chu. Was there a specific committee formed and made the scientific analysis?

Mr. Diaz-Balart. No. What--how was the scientific analysis made? I mean, is it because we have heard things in the past? I mean, you know, we now know that there are a lot of things that people heard in, you know, magazines and scientific decisions were made based on that. What was the scientific analysis and who made it to withdraw the application? It is a relatively simple question.

Secretary Chu. There is no single report.

Mr. Diaz-Balart. There is no scientific analysis?

Secretary Chu. Well----

Mr. Diaz-Balart. Was there a recent scientific analysis that showed something different?

Secretary Chu. By analysis, you are talking about a written report?

Mr. Diaz-Balart. Scientific analysis.

Secretary Chu. Well, I would be glad to give you information on as time progressed what things were coming up. I would be glad to give you----

Mr. Diaz-Balart. But there was no specific scientific analysis to make the decision to withdraw the application?

Secretary Chu. Well, it depends. You have to define for me if you don't want a letter explaining what some of the reasons that made it look like perhaps not the wisest choice. I would be glad to supply you with that. But if that doesn't count as a scientific analysis, I am not----

Mr. Diaz-Balart. Well, you tell me. Do you consider that scientific analysis to make a decision of this scope or do you expect more scientific analysis? If you can get back to me, because I am not seeming to get it now.

[Additional material submitted for the hearing record]

Prepared Response of Secretary Chu

As requested by Congressman Mario Diaz-Balart at the March 3, 2010, House Science and Technology Committee hearing, I am submitting information on the reasons for withdrawing the Department's license application to the U.S. Nuclear Regulatory Commission (NRC) for the Yucca Mountain repository.

DOE is committed to meet the Government's obligation to take possession and dispose of the nation's spent nuclear fuel and high-level nuclear waste. The Administration believes there are better solutions to our spent fuel and nuclear waste storage needs than Yucca Mountain. The science has advanced considerably since the Yucca Mountain site was chosen 25 years ago. That is why we have convened the Blue Ribbon Commission on America's Nuclear Future; it will provide advice and make recommendations on alternatives for the storage, processing and disposal of civilian and defense used nuclear fuel and nuclear waste. The Commission plans to issue an interim report in 18 months and a final report within 24 months of its inception.

The decision to withdraw the pending NRC application accords with these decisions and avoids wasting approximately \$9 million per month on a licensing process for a project that is being terminated. It also ensures that the limited remaining funds available for the project are devoted to winding it down in a responsible manner that preserves scientific knowledge, retains employees with critical skills within the Department and minimizes harm to all affected employees.

The Department of Energy's Motion to Withdraw before the NRC summarizes its rationale for moving to withdraw the Yucca Mountain license application.

Questions for the Record and Responses to the March 3, 2010 Budget Hearing

Questions from Ranking Member Hall

8a. What is the scientific or technical basis, if any, for your decision that the proposed Yucca Mountain repository is "not an option"?

Answer. Scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced over the 20 years since the Yucca Mountain project was initiated. And, the Administration believes we can find a better solution that achieves a broader national consensus. That is why we have convened the Blue Ribbon Commission on America's Nuclear Future; it will provide advice and make recommendations on alternatives for the storage, processing and disposal of civilian and defense used nuclear fuel and nuclear waste. The Commission plans to issue an interim report in 18 months and a final report within 24 months of its inception.

b. How does your decision comport with the Department of Energy's (DOE) statutory obligations under the Nuclear Waste Policy Act of 1982, as amended?

Answer. DOE is acting in a manner consistent with the Nuclear Waste Policy Act (NWPA) and the Atomic Energy Act (AEA), as amended. The AEA gives the Secretary broad authority to carry out the Act's purposes, including the authority to direct the Government's "control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare." This power was not limited in any relevant way by the NWPA. On the contrary, under the NWPA, the NRC proceeding as to Yucca must be conducted "in accordance with the laws applicable to such applications" NWPA Sec. 114(d), 42 U.S.C. Sec. 10134(d). Those laws include the NRC's regulations governing license applications, including the provision authorizing withdrawal of applications, 10 C.F.R. Sec. 2.107(a).

c. Prior to your public statements that Yucca Mountain repository is "not an option," was any analysis performed of the potential taxpayer liabilities associated with such a decision?

Answer. The spent nuclear fuel litigation liability is currently estimated to be \$12.3 billion. Depending on the alternative option adopted as the nation's policy on spent nuclear fuel and high-level waste that liability could increase or decrease. I look forward to receiving the Blue Ribbon Commission's forthcoming recommendations on ways to proceed with the disposal of spent nuclear fuel and high-level waste.

d. Please provide all documents relating to any legal, technical, or scientific analyses that formed the basis for your decision to re-evaluate nuclear waste disposal alternatives to the proposed Yucca Mountain repository, including, but not limited to, evaluations and recommendations that led you to determine that Yucca Mountain was "not an option."

Answer. As noted above, I believe that the scientific and engineering knowledge has advanced considerably over the past two decades and that those advances, as reviewed and evaluated by the Blue Ribbon Commission, should inform our choice of a solution to the nuclear waste disposal issue.

e. What was the process for making your decision that Yucca Mountain repository is "not an option"? Please describe and identify when and with whom you consulted, including, but not limited to, a description and identification of attendees at any public meetings, any Administration meetings, and any consultations with States affected by the decision.

Answer. As the Secretary of Energy, I am responsible for this decision.

f. In reaching your determination that the Yucca Mountain repository is no longer an option, did you consult with or receive any briefings from the Nuclear Waste Technical Review Board, DOE laboratory directors or personnel, or any DOE scientists or technical personnel who performed work on the Yucca Mountain project? Please describe when and with whom you consulted, including, but not limited to, a description and identification of attendees at any meetings.

Answer. Please see my answers above.

g. Have you shared your rationale for determining that the Yucca Mountain repository is "not an option" with the Nuclear Waste Technical Review Board or the Nuclear Regulatory Commission?

Answer. I have not shared my views with the Nuclear Waste Technical Review Board. DOE's Motion to Withdraw before the NRC summarizes its rationale for not proceeding with the Yucca Mountain application.

h. Have you or your staff prepared any analyses of the potential impact that failing to pursue the Yucca Mountain repository may have on the construction of new nuclear plants, which are essential to providing clean and reliable energy in the future? If so, please provide any such analyses.

Answer. The Department is confident that the decision not to proceed with the development of the Yucca Mountain repository will not have an impact on the construction of new nuclear power plants. Spent nuclear fuel can be stored at nuclear facilities for many more decades. We will have recommendations from the Blue Ribbon commission by the end of 2011 or early 2012. The Department and Congress will thus have ample opportunity to move forward with a better approach to these issues in a manner informed by the Commission's recommendations.

i. How do you believe the Administration's decision to scale back the Yucca Mountain project will affect DOE's responsibility to develop, construct, and operate repositories for disposal of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act of 1982, the Nuclear Waste Policy Amendments Act of 1987, and the Energy Policy Act of 1992?

Answer. Please see answer to subquestion (b) above.

j. If a repository at Yucca Mountain is not pursued, what does the Administration propose to do with the billions of dollars that have been collected from ratepayers for the Nuclear Waste Fund?

Answer. The Administration will utilize the monies in the Nuclear Waste Fund to fulfill its responsibility for the disposal of spent nuclear fuel and high-level radioactive waste. The specific path that the Administration takes will be informed by the recommendations of the recently constituted Blue Ribbon Commission.

Questions submitted by Representative Bob Inglis

Q1. What is the factual basis for seeking to withdraw the Yucca Mountain application from the NRC? Is this a decision grounded in science or in political ideology? Has DOE conducted any analysis of the science and engineering behind the site or design to substantiate this decision?

Answer. In my judgment the scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced over the twenty years since the Yucca Mountain project was initiated. I believe future proposals for the disposition of such materials should thus be based on a comprehensive and careful evaluation of options supported by that knowledge, as well as other relevant factors, including the ability to secure broad public support, not on an approach that has not proven ineffective over several decades.

Q2. Why is this application being withdrawn before the NRC has completed its safety and environmental reviews of the Yucca Mountain site?

Answer. As stated previously the Administration has determined that Yucca Mountain is no longer a workable option. At this point, it no longer makes sense to expend limited resources on the licensing of the Yucca Mountain repository.

Q3. Do you agree that this decision is in violation of the Nuclear Waste Policy Act?

Answer. No, I do not agree that this decision is in violation of the Nuclear Waste Policy Act (NWPA), as amended, or any other provision of Federal law. The Atomic Energy Act gives the Secretary broad authority to carry out the Act's purposes, including the authority to direct the Government's "control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare." Exercise of this power in connection with the NRC proceeding was not limited in any relevant way by the NWPA. On the contrary, under the NWPA, the NRC proceeding as to Yucca must be conducted "in accordance with the laws applicable to such applications" NWPA Sec. 114(d), 42 U.S.C. Sec. 10134(d). Those laws include the NRC's regulations governing license applications, including the provision authorizing withdrawal of applications, 10 C.F.R. Sec. 2.107(a).

Q4. Without Yucca Mountain, what do you plan to do with the DOE-spent fuel and high level waste accumulating at the Environmental Management Sites at Savannah River and elsewhere? Do you expect these sites and their surrounding communities to continue to bear the risk of temporary waste storage?

Answer. DOE spent nuclear fuel and high-level waste will continue to be safely stored at the Department's sites until an alternative method of meeting the Federal Government's obligation to dispose of high-level waste and spent nuclear fuel is identified. The Office of Environmental Management will work with our stakeholders to assure them we intend to continue our tank waste projects as planned and in accordance with our compliance agreements, as reflected in the FY 2011 Budget Request.

Q5. The Blue Ribbon Commission is directed to review all alternatives for the storage, processing, and disposal of civilian and defense spent fuel and high level waste. Will the Commission review Yucca Mountain as an option for permanent disposal? If the Commission finds geologic storage to be the optimal decision for securing nuclear waste over the long term, will the Administration renew efforts at Yucca Mountain?

Answer. The Commission will not review Yucca Mountain as an option for permanent disposal. The Blue Ribbon Commission to focus on alternative methods of meeting the Federal Government's obligation to dispose of high-level waste and spent nuclear fuel.

Q6. How do you reconcile the Administration's decision to terminate the Yucca Mountain Project with their commitment to bringing more clean, reliable nuclear energy on-line? Are you confident that the nuclear industry will be able to attract investment without a clear solution for long-term waste storage?

Answer. The Administration remains committed to fulfilling its obligations to dispose of the Nation's spent nuclear fuel and high-level radioactive waste. I am confident that the nuclear industry will be able to attract investment and the decision to terminate the Yucca Mountain repository will have no bearing on the ability of the industry to attract investment. Spent nuclear fuel is safe in on-site storage for many decades, and, during that time, I am confident that, working together, we can devise better solutions for the long-term disposal of spent nuclear fuel.

Questions submitted by Representative Mario Diaz-Balart

Q1. Secretary Chu, what is the factual basis for seeking to withdraw the application from the NRC? What new facts do you have or have you considered, as Secretary of Energy, to determine that you should withdraw the application? Under what statutory authority are you withdrawing the application? Please provide the citation for the record?

Answer. Scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced over the 20 years since the Yucca Mountain project was initiated. And, the Administration believes we can find a better solution that achieves a broader national consensus. That is why we have convened the Blue Ribbon Commission on America's Nuclear Future; it will provide advice and make recommendations on alternatives for the storage, processing and disposal of civilian and defense used nuclear fuel and nuclear waste. The Commission plans to issue an interim report in 18 months and a final report within 24 months of its inception.

The Atomic Energy Act ("AEA" or Act) gives the Secretary broad authority to carry out the Act's purposes, including the authority to direct the Government's "control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to

make the maximum contribution to the common defense and security and the national welfare." AEA Sec. 3(c), 42 U.S.C. Sec. 2013(c). Exercise of this power in connection with the Nuclear Regulatory Commission (NRC) proceeding was not limited in any relevant way by the Nuclear Waste Policy Act. In fact, the NWPA is clear that after the Secretary submits the license application for the Yucca Mountain repository, consideration of that application is to proceed in accordance with the laws applicable to such applications. NWPA Sec. 114(d), 42 U.S.C. Sec. 10134(d).

These laws include the AEA and the regulations adopted by NRC to implement the AEA. The regulations permit an applicant to withdraw an application. 10 C.F.R. 2.107.

Appendix D. Correspondence

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 7, 2009

The Honorable Steven Chu
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Chu:

On April 22, 2009, you testified before the House Committee on Energy and Commerce in connection with its legislative hearings on the American Clean Energy and Security Act of 2009. During your testimony, you stated that the Administration would support a nuclear title in the climate legislation and that the Administration believes that nuclear power has to be "restarted" and must be part of the future energy mix in this country.

Yet you and the Administration are on record as seeking to abandon construction of a deep-underground repository for the nation's nuclear waste at Yucca Mountain, Nevada. This repository, designated by statute to be located at the Yucca Mountain site and to be the nation's first permanent nuclear waste repository, is essential for the revitalization and expansion of nuclear power in the United States. And after over 25 years of scientific and technical study and Congressional review, there are no other alternative sites provided for under the law.

According to your press spokesperson, you believe "nuclear waste storage at Yucca Mountain is not an option, period." At a House Science and Technology Committee hearing in March, you stated that "conditions changed" with regard to Yucca Mountain and that DOE independently is seeking a blue-ribbon panel to take a "fresh look" at nuclear waste and disposal. And your opposition has been reinforced by the Administration's just released FY 2010 Budget, which states that all Department of Energy (DOE) funding for Yucca Mountain development "has been eliminated," except to allow DOE to respond to the Nuclear Regulatory Commission's (NRC) technical questions related to its current review of the DOE Yucca Mountain license application.

Turning away from Yucca Mountain may have significant adverse consequences for the nation and the American taxpayer. For example, the Federal government's total potential liability from delays in accepting used fuel and nuclear waste could be significantly higher than the past estimates of \$11 billion if Yucca Mountain is no longer an option. The Administration's position that Yucca Mountain is not an option also raises significant regulatory and legal issues that may not only adversely affect the licensing and development of new nuclear plants, but also

may impact existing operating nuclear plants. The position also raises significant issues for the U.S. Navy and DOE sites, including for the Hanford, Savannah River, Idaho and other DOE sites where spent nuclear fuel and/or high-level radioactive waste is currently being stored pending permanent disposal.

We write to reconcile your testimony in support of "restarting" nuclear power in connection with clean energy policy with the Administration's actions that risk materially delaying the expansion of nuclear energy in this nation. In light of current climate policy debates, it is critical that we understand the Administration's actual plans in this regard. We would appreciate your providing responses to the following:

1. What is the scientific or technical basis, if any, for your decision that the proposed Yucca Mountain repository is "not an option"?
2. How does your decision comport with the Department of Energy's (DOE) statutory obligations under the Nuclear Waste Policy Act of 1982, as amended?
3. Under what legal authority would a blue ribbon panel re-evaluate options for nuclear waste disposal be established?
4. With regard to the proposed blue ribbon panel:
 - a. How would the panel be established?
 - b. What would be the process for appointing persons to serve on the panel?
 - c. What would be the composition of the panel?
 - d. What would be the scope of its review?
5. Prior to your public statements that Yucca Mountain repository is "not an option," was any analysis performed of the potential taxpayer liabilities associated with such a decision?
6. Please provide all documents relating to any legal, technical, or scientific analyses that formed the basis for your decision to re-evaluate nuclear waste disposal alternatives to the proposed Yucca Mountain repository, including, but not limited to, evaluations and recommendations that led you to determine that Yucca Mountain was "not an option."
7. What was the process for making your decision that Yucca Mountain repository is "not an option"? Please describe and identify when and with whom you consulted, including, but not limited to, a description and identification of attendees at any public meetings, any Administration meetings, and any consultations with States affected by the decision.
8. In reaching your determination that the Yucca Mountain repository is no longer an option, did you consult with or receive any briefings from the Nuclear Waste Technical Review Board, DOE laboratory directors or personnel, or any DOE scientists or technical personnel who performed work on the Yucca Mountain project? Please describe when

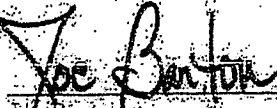
and with whom you consulted, including, but not limited to, a description and identification of attendees at any meetings.

9. Have you shared your rationale for determining that the Yucca Mountain repository is "not an option" with the Nuclear Waste Technical Review Board or the Nuclear Regulatory Commission?
10. Have you or your staff prepared any analyses of the potential impact that failing to pursue the Yucca Mountain repository may have on the construction of new nuclear plants, which are essential to providing clean and reliable energy in the future? If so, please provide any such analyses.
11. How do you believe the Administration's decision to scale back the Yucca Mountain project will affect DOE's responsibility to develop, construct, and operate repositories for disposal of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act of 1982, the Nuclear Waste Policy Amendments Act of 1987, and the Energy Policy Act of 1992?
12. If a repository at Yucca Mountain is not pursued, what does the Administration propose to do with the billions of dollars that have been collected from ratepayers for the Nuclear Waste Fund?

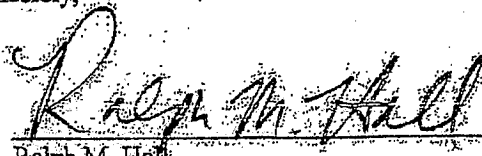
Please provide the written responses and documents requested by no later than two weeks from the date of this letter. We would respectfully request, if the Department withholds any documents or information in response to this letter, that a Vaughn Index or log of the withheld items be attached to the response. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Should you have any questions please contact Mr. Peter Spencer of the Minority Energy and Commerce Committee staff at (202) 225-3641, and Ms. Elizabeth Chapel or Mr. Tom Hammond of the Minority Science and Technology Committee staff at (202) 225-6371.

Sincerely,




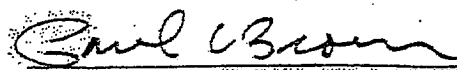
Joe Barton
Ranking Member
Committee on Energy and Commerce



Ralph M. Hall
Ranking Member
Committee on Science and Technology

Letter to the Honorable Steven Chu
Page 4


Greg Walden
Ranking Member
Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce


Paul C. Broun
Ranking Member
Subcommittee on Investigations
and Oversight
Committee on Science and Technology

Enclosure

cc: The Honorable Henry Waxman, Chairman
Committee on Energy and Commerce

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce

The Honorable Bart Gordon, Chairman
Committee on Science and Technology

The Honorable Brad Miller, Chairman
Subcommittee on Investigations and Oversight
Committee on Science and Technology



The Secretary of Energy
Washington, D.C. 20585
June 1, 2009

The Honorable Ralph M. Hall
Ranking Member
Committee on Science and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Hall:

Thank you for your May 7, 2009, letter regarding Yucca Mountain.

As you note in your letter, the Administration is committed to pursuing alternatives to Yucca Mountain. However, we remain committed to meeting our obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste.

Your letter raises a range of complex questions about Yucca Mountain and the Administration's plans to develop alternatives. I believe that we need to proceed with the development of alternatives in a deliberate and thorough fashion that takes into account these complexities – which include technical, safety, legal, economic and other factors.

To that end, the Administration intends to convene a "blue-ribbon" panel of experts to evaluate alternative approaches for meeting the Federal responsibility to manage and ultimately dispose of spent nuclear fuel and high-level radioactive waste from both commercial and defense activities. This panel will provide the opportunity for a full public dialogue on how best to address this challenging issue and will provide recommendations that may form the basis for working with Congress to revise the statutory framework for managing and disposing of spent nuclear fuel and high-level radioactive waste.

As we begin to restart the nuclear industry in the United States, the time is right to reexamine our options and plans for managing the back end of the fuel cycle. Options for storage, recycling, and geologic disposal of spent nuclear fuel and high-level radioactive waste all deserve careful consideration, with an eye towards development of an updated management framework. The Administration looks forward to ongoing dialogue with members of Congress, interested stakeholders, and others as we review options for alternatives to Yucca Mountain in the months ahead.

If you have any questions, please contact me or Ms. Betty A. Nolan, Senior Advisor, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Steven Chu



Printed with soy ink on recycled paper

BART GORDON, TENNESSEE
CHAIRMAN

RALPH M. HALL, TEXAS
RANKING MEMBER

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6375
TTY: (202) 226-4410
<http://science.house.gov>

February 3, 2010

The Honorable Steven Chu
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Secretary Chu:

We write to you once again to seek further explanation and documentation regarding the Administration's decision to abandon the development of the Yucca Mountain site as a nuclear waste repository. Despite a nearly \$10 billion investment, clear congressional direction and legal obligation, and robust scientific study and oversight, the Administration continues to take unexplained actions that could ultimately sacrifice the project.

In May 2009, we wrote you to reconcile your statements in support for "restarting" nuclear power with Administration actions that risk materially delaying the expansion of nuclear energy in the United States.¹ On June 1, 2009 you responded with a brief letter noting your plan to establish a blue ribbon commission on nuclear waste storage but failing to address any of the issues or questions that we raised.²

Follow up discussion between Committee staff and Department staff confirmed that you consider this letter to be responsive and that the Department does not possess documents related to the decision or our inquiry. If this is indeed true, we find it alarming that your Department made an important decision that could have significant adverse consequences for the nation and the American taxpayer without conducting a comprehensive analysis.

The recent announcement of the Blue Ribbon Commission raises more questions than it answers, as you have declined to comment on the nature of the commission's charter.³

¹ Letter from Reps. Ralph Hall, Joe Barton, Paul Brown, and Greg Walden to Secretary Chu, May 7, 2009 (copy attached).

² Letter from Secretary Chu to Reps. Ralph Hall, Joe Barton, Paul Brown, and Greg Walden, June 1, 2009 (copy attached).

³ Peter Behr, "The Administration puts its own stamp on a possible nuclear revival," ClimateWire, Energy and Environment Publishing, February 2, 2010.

The Honorable Stephen Chu
Page two
February 3, 2009

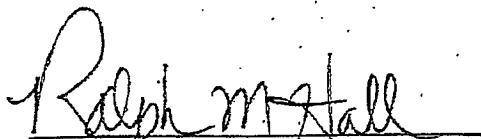
According to the Departments own timeline, the commission won't even issue recommendations until near the end of the Administration's term. This process and timeline highlights the highly illogical nature of terminating the only existing option before assessing potential alternative options, and suggests that political decisions have overridden the need for a systematic and scientific review of all options. Further, the decision to withdraw the Department's Nuclear Regulatory Commission's license application for Yucca Mountain and its concurrent budget proposal to cancel funding for the Office of Civilian Radioactive Waste Management (OCRWM) raises important questions about the legality of these actions with respect to the Nuclear Waste Policy Act (NWPA) of 1982.


While I was pleased to hear that the Administration chose to increase the Department's contribution to the loan guarantee program, the uncertainty surrounding the Blue Ribbon Commission, combined with the Administration's growing record of mixed signals on other aspects of nuclear energy, raises serious questions about the credibility of the Administration's rhetorical support of this nuclear energy. As Secretary of Energy, you have an opportunity to set the record straight and work with Congress to ensure the resurgence of the only energy source capable of providing significant quantities of affordable, safe, carbon-free electricity.

Accordingly, we ask that you provide all documents responsive to our May 7, 2009 letter, as well as respond to the questions we posed at that time. Additionally, please provide an explanation for, and all documents (see attachment) related to, the establishment of the blue ribbon commission on nuclear waste storage. Last, please explain how the administration proposal to cancel funding for OCRWM is consistent with its statutory obligation to provide for radioactive waste storage under the NWPA. Please provide your response by February 16, 2010.

If you or your staff have any questions or needs additional information, please contact either Mr. Tom Hammond or Mr. Dan Byers with the Science and Technology Committee minority staff at (202) 225-6371.

Sincerely,


REP. RALPH HALL
Ranking Member
Committee on Science and Technology


REP. PAUL BROUN, M.D.
Ranking Member
Subcommittee on Investigations
and Oversight
Committee on Science and Technology

Enclosures

cc: The Honorable Bart Gordon, Chairman
Committee on Science and Technology

The Honorable Brad Miller, Chairman
Subcommittee on Investigations and Oversight
Committee on Science and Technology

Congress of the United States
Washington, DC 20510

July 6, 2010

Secretary Stephen Chu
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0002

Dear Secretary Chu:

We write today to request that the Department of Energy immediately halt all actions to dismantle operations at Yucca Mountain at least until legal action regarding the withdrawal of the application is resolved by the DC Circuit Court and the Nuclear Regulatory Commission.

The DC Circuit Court has taken the important step of approving the motion to expedite legal actions and has combined the cases involving the State of Washington, State of South Carolina, Aiken County, and Tri-Cities, Washington community leaders. This is a clear demonstration by the Court that the merits of the case must be heard and ruled upon prior to further action by the Department of Energy to shut down Yucca Mountain.

On June 29, 2010, the Nuclear Regulatory Commission's Atomic Safety and Licensing Board denied the Department's motion to withdraw its license application for Yucca Mountain, a clear statement that the Department does not have the authority under the Nuclear Waste Policy Act to unilaterally terminate Yucca Mountain.

In light of the recent legal and regulatory actions, we are deeply troubled that the Department continues to move forward with terminating the project regardless of this decision. We are also concerned that the Department is using its budget proposal in an attempt to justify the termination of Yucca Mountain.

As you know, the Nuclear Waste Policy Act designated Yucca Mountain as the only candidate site for the national repository. Congressional intent is clear -- Congress has voted several times to retain Yucca Mountain as the national repository. We are deeply disappointed that DOE has overstepped its bounds and has ignored congressional intent without peer review or proper scientific documentation in its actions regarding Yucca Mountain.

We ask that you recognize the letter and spirit of the law, honor the timeline set by the court, and halt all efforts to reprogram funds or terminate contracts related to Yucca Mountain.

Thank you for your consideration and we look forward to your timely response.

Sincerely,

Patty Murray

Lee Neubauer

Laura Alexander

Jim Clark

Kay Bailey Hutchison

Wayne Landrum

Dynan Snow

Art Bond

Dee L. Jay

Sayby Claiborn

Mark

Jim DeMott

John McLean

John Corrigan

Jim Bunning

John

Joe Sessions

Mike Enzi

Jan Rinal

Paul Cochran

John Barrasso

Sam Brantub

John Spivey

Eric Carter

4th Boston

Fred Hayes

Mike Penn

D. Becht

Pick Loran

Joe Wilson

Ben Inglis

Mike Croy

Susan Collins

Norm Richs

James E. Left

Gene Russell

Rich Davis

R. Reinspuser

Coach Methuen Rodgers

J. J. Joke

J. H. Smith

Henry E. Baur

Barry Stupak

Cal Brown
Mike Gillis

Don Dulis
Pete Olson

Alan Kim

John Kline
Mrs. Peay

Lynn Jenkins

Mike Kim

Brett Hutchins

Jeff Hanna

Gingy Bason White

Mark

John Shedy
John Linder

Judy Briggs

Jack Wolf

~~Robert~~

Blaine Jettigen

Robt E. Anderson

Bob Dodelter

John E.

Paul E. Karpinski

John J. Durand

E. Jones

F. Bonner

~~Paul Jones~~

Jack Kingston

Ralph M. Hall

Joe Courtney

Denny Bellamy

J. B. II-17

~~D. O. P.~~

Sue Myrick

Ken Albert

Paul Mangels

Peter Johnson

~~Joe Taylor~~

Doug Walden

E. C. Furr

Harold Rogan

Paul H. Buehler

Jim Lamm

Michael Bachmann

~~W. P.~~

Lu Rwigy

E. Whitfield



The Secretary of Energy
Washington, DC 20585

July 7, 2010

The Honorable Ralph Hall
Ranking Member
Committee on Science and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Hall:

Thank you for your February 3, 2010, letter regarding the decision to terminate the Yucca Mountain project and to convene the Blue Ribbon Commission. I apologize for the delay in responding.

Expanding our Nation's capacity to generate clean nuclear energy is crucial to our ability to combat climate change, enhance energy security, and increase economic prosperity. The Administration is undertaking substantial steps to expand the safe, secure, and responsible use of nuclear energy.

An important part of a sound, comprehensive, and long-term domestic nuclear energy strategy is a well-considered policy for managing used nuclear fuel and other aspects of the back end of the nuclear fuel cycle. We also remain committed to fulfilling the Government's obligations for spent nuclear fuel and high-level radioactive waste. The funds in the Nuclear Waste Fund will be used to meet that obligation.

However, the Administration believes there are better solutions to our used fuel and nuclear waste disposal needs that can achieve a broader national consensus than Yucca Mountain. Science has advanced considerably since the Yucca Mountain site was chosen 25 years ago. That is why we have convened the Blue Ribbon Commission on America's Nuclear Future (Commission); it will provide advice and make recommendations on alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel and high-level radioactive waste. The Commission plans to issue an interim report within 18 months, and a final report within 24 months of its inception.

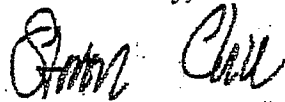
President Obama has directed the Commission to consider a broad range of technological and policy alternatives, and to analyze the scientific, environmental, budgetary, economic, financial, and management issues surrounding each alternative it considers. The Administration looks forward to working closely with Congress and communities around the country that continue to store used nuclear fuel and high-level radioactive waste.



In response to your requests for documents, enclosed is a document that provides the Department's view on the legality of the decisions to discontinue the operation of the Office of Civilian Radioactive Waste Management and to reprogram funds to ensure the orderly closure of the Yucca Mountain Project. Additionally, in response to your request for information regarding the Blue Ribbon Commission, I have included the charter and White House press release regarding the development of the Blue Ribbon Commission.

If you have any questions, please contact me or Ms. Betty A. Nolan, Senior Advisor, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,



Steven Chu

Enclosures

cc: The Honorable Bart Gordon
Chairman, Committee on Science and Technology



U.S. DEPARTMENT OF ENERGY

News Media Contact(s):
(202) 586-4940

For Immediate Release
January 29, 2010

Secretary Chu Announces Blue Ribbon Commission on America's Nuclear Future

The Commission, led by Lee Hamilton and Brent Scowcroft, will provide recommendations on managing used fuel and nuclear waste.

Washington, D.C. — As part of the Obama Administration's commitment to restarting America's nuclear industry, U.S. Secretary of Energy Steven Chu today announced the formation of a Blue Ribbon Commission on America's Nuclear Future to provide recommendations for developing a safe, long-term solution to managing the Nation's used nuclear fuel and nuclear waste. The Commission is being co-chaired by former Congressman Lee Hamilton and former National Security Advisor Brent Scowcroft.

In light of the Administration's decision not to proceed with the Yucca Mountain nuclear waste repository, President Obama has directed Secretary Chu to establish the Commission to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste.

"Nuclear energy provides clean, safe, reliable power and has an important role to play as we build a low-carbon future. The Administration is committed to promoting nuclear power in the United States and developing a safe, long-term solution for the management of used nuclear fuel and nuclear waste. The work of the Blue Ribbon Commission will be invaluable to this process. I want to thank Congressman Hamilton and General Scowcroft for leading the Commission and I look forward to receiving their recommendations," said Secretary Chu.

"As the world moves to tackle climate change and diversify our national energy portfolio, nuclear energy will play a vital role," said Carol Browner, Assistant to the President for Energy and Climate Change. "Today, the Obama Administration has taken an important step. With the creation of the Blue Ribbon Commission, we are bringing together leading experts from around the country to ensure a safe and sustainable nuclear energy future."

"Finding an acceptable long-term solution to our used nuclear fuel and nuclear waste storage needs is vital to the economic, environmental and security interests of the United States," said Congressman Hamilton. "This will be a thorough, comprehensive review based on the best available science. I'm looking forward to working with the many distinguished experts on this panel to achieve a consensus on the best path forward."

"As the United States responds to climate change and moves forward with a long overdue expansion of nuclear energy, we also need to work together to find a responsible, long-term strategy to deal with the leftover fuel and nuclear waste," said General Scowcroft. "I'm pleased to be part of that effort along with Congressman Hamilton and such an impressive group of scientific and industry experts."



Department of Energy

Washington, DC 20585

Blue Ribbon Commission on America's Nuclear Future U.S. Department of Energy

Advisory Committee Charter

1. **Committee's Official Designation.** Blue Ribbon Commission on America's Nuclear Future (the Commission).
2. **Authority.** The Commission is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and as directed by the President's Memorandum For the Secretary of Energy dated January 20, 2010: Blue Ribbon Commission on America's Nuclear Future. This charter establishes the Commission under the authority of the U.S. Department of Energy (DOE).
3. **Objectives and Scope of Activities.** The Secretary of Energy, acting at the direction of the President, is establishing the Commission to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel, high-level waste, and materials derived from nuclear activities. Specifically, the Commission will provide advice, evaluate alternatives, and make recommendations for a new plan to address these issues, including:
 - a) Evaluation of existing fuel cycle technologies and R&D programs. Criteria for evaluation should include cost, safety, resource utilization and sustainability, and the promotion of nuclear nonproliferation and counter-terrorism goals.
 - b) Options for safe storage of used nuclear fuel while final disposition pathways are selected and deployed;
 - c) Options for permanent disposal of used fuel and/or high-level nuclear waste, including deep geological disposal;
 - d) Options to make legal and commercial arrangements for the management of used nuclear fuel and nuclear waste in a manner that takes the current and potential full fuel cycles into account;
 - e) Options for decision-making processes for management and disposal that are flexible, adaptive, and responsive;
 - f) Options to ensure that decisions on management of used nuclear fuel and nuclear waste are open and transparent, with broad participation;



(DFO). The DFO will approve or call all of the Commission and subcommittee meetings, approve all meeting agendas, attend all Commission and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest. Subcommittee directors who are full-time Department of Energy employees, as appointed by the DFO, may serve as DFOs for subcommittee meetings.

9. **Estimated Number and Frequency of Meetings.** The Commission is expected to meet as frequently as needed and approved by the DFO, but not less than twice a year.

The Commission will hold open meetings unless the Secretary of Energy, or his designee, determines that a meeting or a portion of a meeting may be closed to the public as permitted by law. Interested persons may attend meetings of, and file comments with, the Commission, and, within time constraints and Commission procedures, may appear before the Commission.

Members of the Commission serve without compensation. However, each appointed non-Federal member may be reimbursed for per diem and travel expenses incurred while attending Commission meetings in accordance with the Federal Travel Regulations.

10. **Duration and Termination.** The Commission is subject to biennial review and will terminate 24 months from the date of the Presidential memorandum discussed above, unless, prior to that time, the charter is renewed in accordance with Section 14 of the FACA.

11. **Membership and Designation.** Commission members shall be experts in their respective fields and appointed as special Government employees based on their knowledge and expertise of the topics expected to be addressed by the Commission, or representatives of entities including, among others, research facilities, academic and policy-centered institutions, industry, labor organizations, environmental organizations, and others, should the Commission's task require such representation. Members shall be appointed by the Secretary of Energy. The approximate number of Commission members will be 15 persons. The Chair or Co-Chairs shall be appointed by the Secretary of Energy.

12. **Subcommittees.**

- a) To facilitate functioning of the Commission, both standing and ad hoc subcommittees may be formed.
- b) The objectives of the subcommittees are to undertake fact-finding and analysis on specific topics and to provide appropriate information and recommendations to the Commission.



Department of Energy
Washington, DC 20585

April 12, 2010

The Honorable Rodney P. Frelinghuysen
Ranking Member
Subcommittee on Energy and Water Development
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Frelinghuysen:

To ensure that the Department of Energy fully addresses the legal concerns you raised during the March 24th hearing of the Subcommittee on Energy and Water Development, Secretary Chu has asked me to provide you with our views on the legality of the recent decisions to discontinue operation of the Office of Civilian Radioactive Waste Management ("OCRWM") and reprogram funds to ensure the orderly closure of the Yucca Mountain Project. We are sensitive to the issues you raised and appreciate the opportunity to set forth our analysis.

I. The Discontinuation and Consolidation of OCRWM

At the March 24th hearing, you expressed concern that the Department might not have statutory authority to discontinue operation of OCRWM. You also were concerned that the proposed discontinuation might violate both Section 302 of the 2010 Energy and Water Development and Related Agencies Appropriations Act ("FY2010 EWD")¹ and § 4604 of the Atomic Energy Defense Act.²

A. The Department Has Authority to Discontinue Operation of OCRWM

We agree completely with your observation at the hearing that the Department "ha[s] to have some statutory authority" in order to discontinue operation of OCRWM. We believe that the Department of Energy Organization Act provides that authority since it grants the Secretary of Energy broad discretion "to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary and appropriate." See 42 U.S.C. § 7253(a). The Secretary's discretion does "not extend to the abolition of organizational units or components established by" the Organization Act.³ But, as you noted, OCRWM was not established by the Organization Act. Rather, it was established by the Nuclear

¹ Pub. L. No. 111-85 (2009).

² 50 U.S.C. § 2704; formerly § 3161 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484 (1992).

³ *Id.* (emphasis added).

Waste Policy Act of 1982 ("NWPA").⁴ Accordingly, the Secretary has the authority to "alter, consolidate or discontinue" OCRWM as he deems "necessary and appropriate."

B. The Proposed Discontinuation Does Not Violate Section 302.

You also expressed concern that Section 302 of the FY2010 EWD might prohibit the Department from discontinuing OCRWM operations. Section 302(3) provides that "[n]one of the funds appropriated by this Act may be used . . . [to] develop or implement a workforce restructuring plan that covers employees of the Department of Energy."

The text of Section 302(3) dates back to the 1998 Energy and Water Development Appropriations Act ("FY1998 EWD"),⁵ which prohibited the use of appropriated funds to "develop or implement a workforce restructuring plan that covers employees of the Department of Energy . . . under section 3161 of the National Defense Authorization Act for Fiscal Year 1993." FY1998 EWD, § 303. Both the text and the legislative history of the FY1998 EWD make clear that the "workforce restructuring plan" provision was intended only to prohibit the Department of Energy from extending to *federal employees* benefits provided by § 3161 of the National Defense Authorization Act for Fiscal Year 1993, to *contractors* affected by the post-cold war downsizing of the Department's defense production complex. See H.R. Rep. No. 105-190, at 126 (1997) ("The Committee has been informed by the Secretary of Energy that the Department plans to extend the provisions of section 3161 to Federal employees at Department of Energy sites. This would provide to Department of Energy employees additional benefits which are not available to any other Federal employees. This was never the intent of this legislation. Federal employees are covered by a multitude of laws which control employee benefits and protections during the downsizing of Federal agencies."). This narrow prohibition has been retained in successive Energy and Water Development Appropriations Acts since FY1998 – including the FY2010 EWD.

The 2009 Omnibus Appropriations Act⁶ re-numbered the statutory provisions and consolidated the "workforce restructuring plan" provision in its current form. This reorganization, however, did not change the meaning of that long-standing provision. To the contrary, the phrase "workforce restructuring plan" as carried forward to the FY2010 EWD is a term of art that cannot properly be understood outside its original linkage to § 3161. Indeed, the House Report accompanying the 2009 Omnibus Appropriations Act states that the Act "prohibits the use of funds for workforce restructuring. . . under section 3161 of Public Law 102-484."⁷ Likewise, the House Report on the FY2010 EWD states (under the title "Section 3161 Assistance") that "[s]ection 302 prohibits the use of funds for workforce restructuring. . . under section 4604 of the Atomic Energy Defense Act."⁸

⁴ Specifically, OCRWM was established by § 304 of the NWPA. See 42 U.S.C. § 10224. Nothing in the NWPA mandates that OCRWM must operate in perpetuity or indicates that the Secretary's authority under the Organization Act was repealed.

⁵ Pub. L. No. 105-62 (1997).

⁶ Pub. L. No. 111-8 (2009).

⁷ H.R. Rep. No. 110-921, at 171 (2008) (emphasis added).

⁸ H.R. Rep. No. 111-203, at 195 (2009) (emphasis added).

It is therefore clear that the phrase "workforce restructuring plan" as employed in Section 303 of the FY1998 EWD and carried forward to Section 302 of the FY2010 EWD is a term of art effectively prohibiting the Department from extending to its terminated employees (as opposed to contractors) § 3161 benefits. Were it otherwise, this provision would prohibit the Department from undertaking any reorganization - no matter how minor - that led to the termination of any identifiable group of employees. It is simply not credible that, for the past dozen years, the Department has been prohibited from eliminating any office or terminating any single group of employees. Simply put, Section 302 was drafted to preserve a long-standing, but specific, limitation of Departmental authority that is not applicable here.

Fundamental principles of statutory construction also buttress this understanding of Section 302. Were Section 302 read to prohibit the elimination of any office it would, implicitly, repeal the Secretary's clear authority under the Organization Act to "discontinue . . . organizational units." But "[i]t is . . . a cardinal principle of statutory construction that repeals by implication are not favored." *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168 (1976). See also *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 190 (1978). As the Supreme Court said, ". . . this 'cardinal rule' means that in the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Id.* Here, of course, the statutes are entirely reconcilable. Moreover, the Supreme Court has noted that "the policy [against repeal by implication] applies with even greater force when the claimed repeal rests solely on an Appropriations Act." *Id.*

C. The Proposed Discontinuation Does Not Violate Section 3161.

At the hearing, you noted these "original links" between Section 302 and Section 3161, and asked whether the discontinuation of OCRWM may "actually violat[e] section 3161." We agree that §§ 302 and 3161 are inextricably linked. But we are confident that nothing in Section 3161 prohibits the proposed discontinuation of OCRWM operations.

Section 3161, now codified at 50 U.S.C. § 2704, is titled "Department of Energy defense nuclear facilities workforce restructuring plan"⁹ and provides that "[u]pon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce of [that] facility" according to certain prescribed criteria. In particular, the statute provides that, "[i]n preparing the plan . . . the Secretary shall be guided by [certain] objectives," including "to minimize social and economic impacts;" to provide "preference in [future] hiring" to "[e]mployees whose employment . . . is terminated;" and to provide these employees with "relocation assistance" and "retraining, education, and reemployment assistance."¹⁰

Thus, Section 3161 prescribes certain benefits for "[e]mployees whose employment in positions at [Department of Energy defense nuclear] facilities is terminated." *Id.* at § 2704(c)(2). Regardless whether the Yucca Mountain facility is a "Department of Energy defense nuclear facility" under 50 U.S.C. § 2704(g), Section 2704 prohibits neither the employees' termination nor the reorganization that necessitates it. To the contrary, the statute functions as a guide for

⁹ Emphasis added.

¹⁰ See 50 U.S.C. § 2704(c).

reorganization, recognizing "that a change in the workforce at a defense nuclear facility" will at times be "necessary." *Id.* at § 2704(a).¹¹

II. The Reprogramming of Appropriated Funds

At the hearing, you also expressed concern about the Department's plan to reprogram approximately \$115,000,000 of prior appropriations balances for use in the orderly closure of the Yucca Mountain Project. As the Secretary reaffirmed at the hearing, the Department is committed to keeping the Subcommittee apprised of reprogramming actions and, in this case, it provided written notice of its intent to reprogram in a February 17, 2010 letter to Chairman Visclosky. The Secretary has also indicated his intent to confer with you further about this reprogramming decision.

As a legal matter, though, the Department has the right to reprogram funds. The Supreme Court has stated that the authority to reprogram funds is implicit in a lump-sum appropriation. See *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993). As the Court said, "the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way."

As noted in its February 17th letter, the Department is exercising this authority to reprogram a total of approximately \$115,000,000 for use within the Repository Program control point and the Program Direction control point for Yucca Mountain Project and program office termination activities within the Nuclear Waste Disposal and Defense Nuclear Waste Disposal appropriations. Thus, the funds reprogrammed will be used consistently with the broad purpose for which they were appropriated. See FY2010 EWD.¹²

The Department is mindful that the conference report accompanying the FY2010 EWD included a section titled "Reprogramming Requirements." See H.R. Conf. Rep. No. 111-278, at 102 (2009). That section requests that the Department submit a "reprogramming . . . to the House and Senate Committees on Appropriations for consideration before any implementation of a reorganization proposal which includes moving previous appropriations between appropriation accounts." It further requests that the Department "inform the Committees promptly and fully when a change in program execution and funding is required during the fiscal year."

We believe the Department acted in accordance with the spirit of this provision through its February 17th letter. It certainly intended to do so. We regret any lapses that may have occurred in communication between the Department and your Committee, and assure you of the Department's intent to keep the lines of communication open going forward.

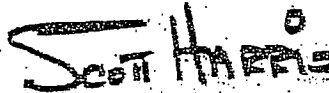
¹¹ Here, the statute tracks § 643 of the Organization Act, which, as noted, authorizes the Secretary "to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary and appropriate." 42 U.S.C. § 7253(a).

¹² The Department has consistently affirmed that it fully intends to meet its obligations to take possession and dispose of the nation's spent nuclear fuel and high level radioactive waste.

As the Secretary affirmed in his March 26, 2010 letter to Chairman Visclosky, the Department takes very seriously the responsibilities and prerogatives of the Appropriations Committee and the obligations of the Department under the law. We are confident that our actions with respect to the discontinuation of OCRWM operations and the reprogramming of appropriated funds are entirely legal. Nevertheless, we are available to discuss any further concerns you or your staff may have and I am personally available to discuss legal concerns at any time.

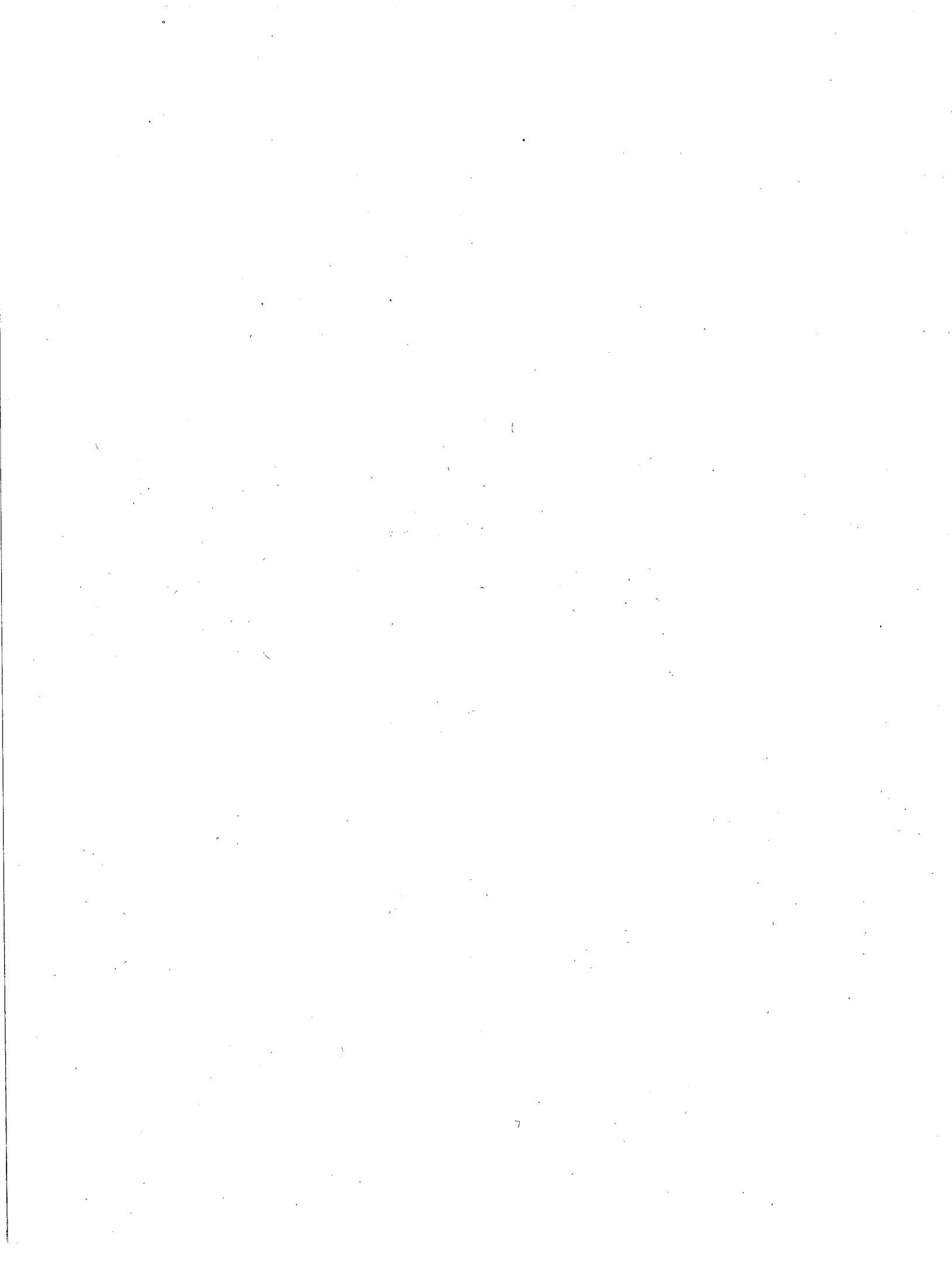
The Department looks forward to working with your office toward the development of safe, secure, and workable plans for the long term storage of America's spent nuclear fuel and high level radioactive waste materials.

Sincerely,



Scott Blake Harris
General Counsel

cc: The Honorable Peter Visclosky, Chairman
The Honorable Ed Pastor, Vice Chairman



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

SUITE 2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6375
<http://science.house.gov>

July 20, 2010

The Honorable Steven Chu
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Secretary Chu:

We write to you once again to seek further explanation and documentation regarding the Administration's decision to abandon the development of the Yucca Mountain site as a nuclear waste repository. Despite a nearly \$10 billion investment, clear congressional direction and legal obligation, and robust scientific study and oversight, the Administration continues to take unexplained actions that could ultimately sacrifice the project.

In May 2009 and February 2010 we wrote you to reconcile your statements in support for "restarting" nuclear power with Administration actions that risk materially delaying the expansion of nuclear energy in the United States.¹² On June 1, 2009 and July 7, 2010 you responded with brief letters noting your plan to establish a blue ribbon commission on nuclear waste storage but failing to provide the requested records.³

Follow up discussion between Committee staff and Department staff confirmed that you consider the June 1, 2009 letter to be responsive and that the Department does not possess documents related to the decision or our inquiry. If this is indeed true, we find it alarming that your Department made an important decision that could have significant adverse consequences for the nation and the American taxpayer without conducting a comprehensive analysis.

The Nuclear Regulatory Commission's (NRC) recent ruling that the Department of Energy lacked the authority to withdraw its application for Yucca Mountain further reinforces the need for Congress to review the circumstances surrounding this decision.

¹ Letter from Reps. Ralph Hall, Joe Barton, Paul Broun, and Greg Walden to Secretary Chu, May 7, 2009 (copy attached).

² Letter from Reps. Ralph Hall, and Paul Broun to Secretary Chu, February 3, 2010 (copy attached).

³ Letter from Secretary Chu to Reps. Ralph Hall, Joe Barton, Paul Broun, and Greg Walden, June 1, 2009; and Letter from Secretary Chu to Reps. Ralph Hall and Paul Broun, July 7, 2010 (copy attached).

The Honorable Chu

July 20, 2010

Page two

In their decision, the NRC's Atomic Safety and Licensing Board Administrative Judges stated that:

[U]nder the NWPA [Nuclear Waste Policy Act] ultimately authority to make a siting decision is not committed to the discretion of either the Secretary of Energy or the President, but instead rests with Congress.⁴

Furthermore, they went on to reference Congressional intent by citing the debate surrounding S. 6476 which stated:

A license application will be submitted by the Department of Energy for Yucca Mountain and over the next several years, the Nuclear Regulatory Commission will go through all the scientific and environmental data and look at the design of the repository to make sure that it can meet environmental and safety standards. This will be done by scientists and technical experts.⁵ [emphasis added]

In a speech before the National Academies of Science, the President stated "I want to be sure that facts are driving scientific decisions -- and not the other way around."⁶ Similarly, when signing the new Executive Order regarding stem cell research, the President stated:

We base our public policies on the soundest science; that we appoint scientific advisors based on their credentials and experience, not their politics or ideology; and that we are open and honest with the American people about the science behind our decisions.⁷

To date, the Department of Energy has not provided any scientific or technical justification for determining that Yucca Mountain "is not a workable option," arguing that the decision is, in fact, a "matter of policy."⁸ We have serious concerns that a decision of this magnitude was made without proper authority and without any semblance of scientific or technical review.

Accordingly, we once again ask that you provide all records responsive to the May 7, 2009, and February 3, 2010 letters. Additionally, we request that you provide the following records, as defined in the attachment, for the period of July 1, 2008 to the present.

⁴ NRC ASLB, Memorandum and Order, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (June 29, 2010)

⁵ Ibid.

⁶ Remarks by the President at the National Academy of Sciences Annual Meeting, April 27, 2009.

⁷ Remarks by President Barack Obama - As Prepared for Delivery, Signing of Stem Cell Executive Order and Scientific Integrity Presidential Memorandum, March 9, 2009.

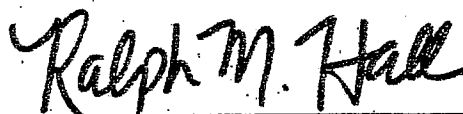
⁸ NRC ASLB, U.S. Dep't of Energy Motion to Withdraw, Docket No. 63-001 ASLBP No. 09-892-HLW-CAB04 (March 3, 2010).

The Honorable Chu
July 20, 2010
Page three

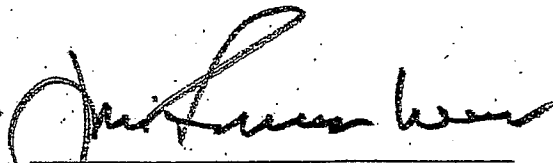
- 1.) All records related to the Department's Motion to Withdraw its pending licensing application with prejudice for a permanent geologic repository at Yucca Mountain, Nevada;
- 2.) All records related to any decision to terminate, reduce, or limit funding for the Yucca Mountain project.
- 3.) All records related to the discontinuation or altering of standard monitoring and data collection at the site.
- 4.) All records related to the Department's policies and procedures relating to preserving and archiving documents related to the Yucca Mountain Repository License Application.

Please deliver two sets of copies to 394 Ford House Office Building. As part of this request was initially made well over a year ago, I would appreciate your response no later than July 30, 2010. If you have any questions or needs additional information, please contact either Mr. Tom Hammond or Mr. Dan Byers with the Science and Technology Committee minority staff at (202) 225-6371, or Mr. Andy Zach with the Select Committee on Energy Independence and Global Warming minority staff at (202) 225-0110.

Sincerely,



REP. RALPH HALL
Ranking Member
Committee on Science and Technology



REP. F. JAMES SENSENBRENNER
Ranking Member
Select Committee on Energy Independence
and Global Warming



REP. PAUL BROWN, M.D.
Ranking Member
Subcommittee on Investigations
and Oversight
Committee on Science and Technology

Attachment
Enclosures

cc: The Honorable Bart Gordon, Chairman
Committee on Science and Technology

The Honorable Brad Miller, Chairman
Subcommittee on Investigations and Oversight
Committee on Science and Technology

The Honorable Edward Markey, Chairman
Select Committee on Energy Independence
and Global Warming



Department of Energy
Washington, DC 20585

July 23, 2010

The Honorable F. James Sensenbrenner
Ranking Member
Select Committee on Energy Independence
And Global Warming
Washington, DC 20515

Dear Congressman Sensenbrenner:

The Department is in receipt of your July 20, 2010 letter requesting documents related to Yucca Mountain.

We are in the process of collecting responsive documents and will soon begin to review them. We will arrange with your staff to make documents available over the next few weeks.

If you have any questions, please call me at (202) 586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Lane".

Jeffrey A. Lane
Assistant Secretary for Congressional
and Intergovernmental Affairs





Department of Energy

Washington, DC 20585

August 3, 2010

The Honorable Ralph Hall
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Hall:

I sincerely apologize for the delay -- but I wanted to respond to your letter of July 6, 2010 to Secretary Chu suggesting that, in light of the decision of the NRC's Atomic Safety and Licensing Board, the Department cease its efforts to wind down the project to build a permanent repository for high-level waste and spent nuclear fuel at Yucca Mountain. We believe that it is both lawful and, given the circumstances, wise to continue our efforts to bring the Yucca Mountain project to a responsible close.

First, despite the contrary ruling of the Board, we believe the Department has authority under the Atomic Energy Act and the Nuclear Waste Policy Act to withdraw the license application for Yucca Mountain that is pending before the Nuclear Regulatory Commission. As you know, the Board's decision is just the first step in the decisional process. Indeed, the day after the Board's ruling, the NRC issued an Order requesting briefing on an expedited basis as to whether it should review, and affirm or reverse, the Board's decision. The Department has since filed a brief urging the NRC to review and reverse the Board's ruling. As the Department explained in that filing, we believe the Board's denial of DOE's motion to withdraw the application was the result of significant misunderstandings as to applicable legal principles.

Second, the Department also continues to believe that a responsible and orderly winding down of the Yucca project is in the public interest. By proceeding with that process now, the Department is able to ensure that relevant documents and scientific knowledge are preserved and that actions are taken to minimize harm to affected employees.

Finally, it is worth noting that the State of Washington had asked the United States Court of Appeals for the D.C. Circuit to enjoin the ongoing efforts to bring the Yucca Mountain project to an orderly close. After the Department explained that its actions are not irreversible, the court rejected that request since Washington had not shown that the Department's actions created irreparable injury.

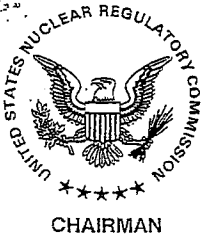
If you have any further questions, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink that reads "Scott Harris".

Scott Blake Harris
General Counsel





UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 27, 2010

The Honorable Ralph M. Hall
Ranking Member, Science and Technology
Committee
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Hall:

This letter is in response to your letter of October 13, 2010, in which you expressed concerns about reports regarding the U.S. Nuclear Regulatory Commission's (NRC's) review of the U.S. Department of Energy license application seeking to construct a geologic repository at Yucca Mountain, Nevada. You also requested answers to six questions. My responses to those questions are enclosed.

As detailed in my enclosed responses, I want to assure you that the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past NRC practice.

I appreciate your interest in our high-level waste program and will keep you informed of NRC activities in this regard, and would be happy to meet with you to discuss this matter further.

Sincerely,

Gregory B. Jaczko

Enclosure:
Responses to Questions

Responses to Questions

QUESTION 1.

On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?

ANSWER.

Neither the text of the Fiscal Year (FY) 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the Fiscal Year 2011 Continuing Resolution provide the Commission with express direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. In the absence of an express direction, the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice. The Commission declined to revisit this decision in voting earlier this month.

As you know, in FY 2010, the NRC requested \$56 million for its High-Level Waste (HLW) program, but Congress only appropriated \$29 million. The NRC requested an appropriation of \$10 million for the HLW program in FY 2011, or about a third of the FY 2010 appropriation. Both the Senate Appropriations Committee and the Energy and Water Development subcommittee of the House Appropriations Committee approved that sum for FY 2011.

Under these circumstances, the path that the NRC is following is consistent with NRC's obligation to spend funds prudently under a Continuing Resolution pending final budget action by the Congress. See Section 110 of Pub. L. 111-242, 124 Stat. 2607 (Sept. 30, 2010); OMB Circular No. A-11, §123.2 (2010).

QUESTION 2.

What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?

ANSWER.

Pursuant to the guidance issued by the Executive Director of Operations and the Chief Financial Officer, staff is beginning an orderly closure of the program. No specific actions have yet been taken to terminate the program. Rather the first step of this process is to preserve the staff's work products, and complete and implement a detailed and comprehensive plan for this effort. The entire process is expected to take at least a year and include documenting the staff's review and other knowledge concerning the program by means such as comprehensive technical reports and videotaped interviews of technical staff.

QUESTION 3.

How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?

ANSWER.

The staff is following established Commission policy to begin to close out the HLW program. These actions are separate from our hearing process and any decision the Commission may make to review the Atomic Safety and Licensing Board's (ASLB's) ruling and decide whether to uphold or reverse their decision concerning the formal status of the U.S. Department of Energy's (DOE's) application.

Enclosure

QUESTION 4. How will your decision impact future legal challenges to DOE's motion to withdraw?

ANSWER.

Currently the United States Court of Appeals for the District of Columbia has held related proceedings in abeyance pending NRC action. *In re Aiken County*, No. 10-1050 (and consolidated cases)(D.C. Cir.). I am not in a position to speculate on how this court or any future court will respond to NRC's actions.

QUESTION 5. How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?

ANSWER.

The staff is beginning to transition to close out for the reasons outlined above. By thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be able to respond to direction from the Congress or the courts.

QUESTION 6. What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House.

ANSWER.

Consistent with my role as Chairman of an independent regulatory commission, members of my staff and I informed the White House and a select number of Members of the Congress, including NRC's authorizers and appropriators as well as Senator Reid, on a bipartisan basis, of the budgetary decision to begin to transition to close out of NRC's HLW activities. Neither I, nor anyone on my staff, had communication with the U.S. Department of Energy regarding this decision.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

February 14, 2011

The Honorable Steven Chu
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Secretary:

Please provide all documents referenced in the attached correspondence. It is my understanding that previous responses from the Department were limited to those documents releasable under the Freedom of Information Act (FOIA). As you know, FOIA does not provide authority to withhold information from Congress.¹

Please provide these documents immediately, as they would have been collected pursuant to the previous request. If you have any questions, please contact Mr. Tom Hammond, Staff Director, Subcommittee on Investigations and Oversight, Committee on Science, Space, and Technology at (202) 225-6371.

Sincerely,



Rep. Paul Broun, M.D.
Chairman
Subcommittee on Investigations
and Oversight

Attachment

cc: Rep. Ralph Hall, Chairman
Committee on Science, Space
and Technology

Rep. Eddie Bernice Johnson
Ranking Member
Committee on Science, Space,
and Technology

¹ 5 U.S.C. §552(d)

Rep. Andy Harris
Chairman
Subcommittee on Energy
and Environment.

Rep. Donna Edwards
Ranking Member
Subcommittee on Investigations
and Oversight



Department of Energy

Washington, DC 20585

February 28, 2011

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on
Investigations and Oversight
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Secretary Chu has asked me to respond to your February 14, 2011, letter requesting documents related to Yucca Mountain that were withheld when the Department responded to document requests made last year by individual Members of the Committees on Science, Space and Technology and Energy and Commerce.

Although we previously collected documents relating to requests by individual members of Congress, we did not evaluate those documents pursuant to the different standards traditionally used in evaluating requests by jurisdictional committees of the Congress. Nor did we attempt to identify deliberative documents relating to pending litigation and documents in which other agencies, such as the Department of Justice, have an interest and that may require consultation within the Executive Branch before production.

We have, however, already begun to review these previously collected documents and it is our goal to provide all the information we are in a position to provide as promptly as possible. We anticipate providing the documents to the Subcommittee on a rolling basis over the next few weeks. Indeed, with this letter, we are providing the first set of documents in response to your February 14th request.

If you have any questions, please feel free to contact me at (202) 586-5281.

Sincerely,

A handwritten signature in black ink that reads "SCOTT HARRIS". The signature is stylized with a large, bold "S" and "H".

Scott Blake Harris
General Counsel

Enclosures



cc: Representative Ralph Hall, Chairman
Committee on Science, Space, and Technology

Representative Eddie Bernice Johnson
Ranking Member
Committee on Science, Space, and Technology

Representative Donna Edwards
Ranking Member
Subcommittee on Investigations and Oversight



Department of Energy

Washington, DC 20585

March 22, 2011

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on
Investigations and Oversight
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is an additional response to your February 14, 2011, letter requesting documents related to Yucca Mountain that were withheld when the Department responded to document requests made last year by individual Members of the Committees on Science, Space and Technology and Energy and Commerce. On February 28, 2011, Scott Blake Harris, the Department's General Counsel, notified you that we were evaluating these previously withheld documents and anticipated providing documents to the Subcommittee on a rolling basis. Consistent with Mr. Harris' commitment, by this letter we are providing you a second set of documents in response to your February 14th request.

If you have any question, please feel free to contact me at (202) 586-5284.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Fygi".

Eric J. Fygi
Deputy General Counsel

Enclosures

cc: Representative Ralph Hall, Chairman
Committee on Science, Space, and Technology

Representative Eddie Bernice Johnson
Ranking Member
Committee on Science, Space, and Technology

Representative Donna Edwards
Ranking Member
Subcommittee on Investigations and Oversight





Department of Energy
Washington, DC 20585

April 1, 2011

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on
Investigations and Oversight
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is the third response to your February 14, 2011, letter requesting documents related to Yucca Mountain that were withheld when the Department responded to document requests made last year by individual Members of the Committees on Science, Space, and Technology and Energy and Commerce. As you will recall, we provided documents responsive to your February 14 request on February 28 and March 22.

You will notice that we have redacted some entries from some of the documents being transmitted by this letter. The redacted information is wholly unrelated to decisions or other questions or issues associated with the Yucca Mountain Project, and as a result, does not appear to be responsive to your request. As we have noted in the past, we continue to evaluate the previously withheld documents and anticipate providing the Subcommittee with additional responsive documents in the future.

If you have any question, please feel free to contact me at (202) 586-5284.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Fygi".

Eric J. Fygi
Deputy General Counsel

Enclosures



cc: Representative Ralph Hall, Chairman
Committee on Science, Space, and Technology

Representative Eddie Bernice Johnson
Ranking Member
Committee on Science, Space, and Technology

Representative Donna Edwards
Ranking Member
Subcommittee on Investigations and Oversight

Congress of the United States
Washington, DC 20545

October 13, 2010

Chairman Gregory Jaczko
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

We are writing to express our concern regarding reports that you are unilaterally halting the Nuclear Regulatory Commission's (NRC) review of the Department of Energy's (DOE) license application for the nuclear waste repository at Yucca Mountain.

Recent media reports assert that you directed NRC staff to begin terminating review of DOE's license application, consistent with the language of the Fiscal Year 2011 (FY11) budget request, despite the fact that Congress has yet to approve the FY11 budget.¹ This action has been justified in a guidance memo which argues, "the [continuing resolution] legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget..."² However, basing funding and operational decisions on submitted budget requests, not appropriations bills signed into law, is suspect. Even the NRC spokesman, David McIntyre, noted that he was "not sure whether there was a precedent for [your] decision."³

Your directive is even more alarming given the current status of the license application. As you know, the Atomic Safety and Licensing Board (ASLB) rejected DOE's motion to withdraw the license application on June 29, 2010. According to the ASLB, DOE lacks the authority to overrule clear Congressional intent for NRC to review the license application of Yucca Mountain as a nuclear waste repository. As you know, Congress passed the Nuclear Waste Policy Act of 1982 (NWPA) to centralize the long-term management of nuclear waste, including construction of a safe and permanent nuclear waste repository. In 1987, Congress amended the NWPA by designating Yucca Mountain as the only option for a longer-term storage site by a vote of 237-181 in the House of Representatives and 61-28 in the Senate. Congress reaffirmed Yucca Mountain's designation as the only option for a long-term storage site in 2002 by a vote of 306-117 in the House of Representatives and 60-39 in the Senate. Again in 2007, the House of Representatives overwhelmingly rejected, by a vote of 80-351, an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program. Additionally, on July 6, 2010, 91 Members of Congress sent DOE a letter expressing concern with their decision to immediately close Yucca Mountain.

The commissioners have not yet issued a ruling on appeal; therefore, unless the commission overturns the ASLB decision, the NRC must consider the license application. Your unilateral

¹ <http://www.wfn.com/news/nrc-chairman-directs-stoppage-of-yucca-review-10458878.html>

² U.S. Nuclear Regulatory Commission, "Guidance Under a Fiscal Year 2011 Continuing Resolution," October 4, 2010.

³ <http://www.cnn.com/2010/10/07/na/>

Chairman Jaczko
October 13, 2010
Page Two

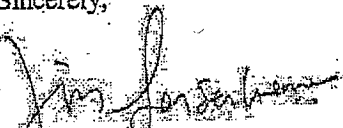
decision silences the opinions of the other commissioners on the pending appeal. Further, legal challenges in federal court are imminent, pending final action from the NRC. Your directive gives the appearance of coordinated action between you and DOE, which suggests an additional level of impropriety.

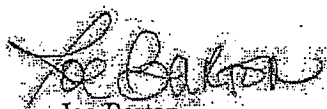
In light of the reports, we request answers to the following questions:

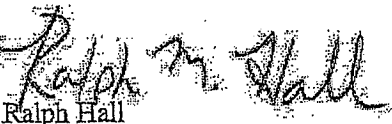
1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?
2. What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?
3. How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?
4. How will your decision impact future legal challenges to DOE's motion to withdraw?
5. How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?
6. What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House?


Please respond by October 27, 2010. We appreciate your cooperation.

Sincerely,


Jim Sensenbrenner
Ranking Member
Select Committee on Energy Independence and
Global Warming


Joe Barton
Ranking Member
Energy and Commerce Committee


Ralph Hall
Ranking Member
Science and Technology Committee


Doc Hastings
Ranking Member
Natural Resources Committee

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

COMMISSIONER

November 1, 2010

The Honorable Doc Hastings
Ranking Member, Committee on
Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Hastings:

I write in response to your letter of October 21, 2010, regarding Volume III of NRC's Yucca Mountain Safety Evaluation Report (SER).

As you are aware, subsequent to the decision by NRC Chairman Gregory Jaczko to direct the orderly closure of NRC's High Level Waste program, Commissioner William Ostendorff formally proposed that the Commission revisit the Chairman's direction, including the issuance of explicit Commission direction to the NRC staff that it continue towards its release of Volume III of the Yucca Mountain SER.

Although a majority of Commissioners declined to participate, denying a quorum required for action on his proposal, I voted in support of Commissioner Ostendorff's request. A copy of my vote is enclosed with this letter. In it, I state that "whatever the ultimate disposition of the Yucca Mountain license application and associated activities, complete SER documents should be a matter of public record and will be the best vehicle to memorialize the scientific knowledge and analysis gained during the technical review."

I do not have access to Volume III of the SER, and would receive it upon its public release, but I understand that your request to be provided a copy of it has been referred to the NRC's Office of Congressional Affairs. I thank you for the opportunity to provide my individual view in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Kristine L. Svinicki".

Kristine L. Svinicki

Enclosure:
Vote for COMWCO-10-0002

Identical Letters Sent to the following Congressmen:

The Honorable F. James Sensenbrenner, Jr.
Vice-Chairman
House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on
Investigations and Oversight
House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

The Honorable Andy Harris
Chairman, Subcommittee on
Energy and Environment
House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER SVINICKI

SUBJECT: COMWCO-10-0002 - COMMISSION DIRECTION ON
STAFF BUDGET GUIDANCE UNDER FISCAL YEAR
(FY) 2011 CONTINUING RESOLUTION

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

10/14/10

DATE

Entered on "STARS" Yes No _____

Commissioner Svinicki's Comments on COMWCO-10-0002
Commission Direction on Staff Budget Guidance Under
Fiscal Year 2011 Continuing Resolution

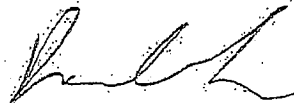
I approve Commissioner Ostendorff's proposal, contained in COMWCO-10-0002, that during the pendency of the Fiscal Year 2011 Continuing Resolution, the staff continue to follow its schedule for completing and issuing the Safety Evaluation Report (SER) volumes and further, that the staff continue to work on any remaining SER volumes until fiscal year 2010 funds are exhausted. I agree that, whatever the ultimate disposition of the Yucca Mountain license application and associated activities, complete SER documents should be a matter of public record and will be the best vehicle to memorialize the scientific knowledge and analysis gained during the technical review. Consequently, the staff should continue to work on and issue the remaining SER volumes according to its stated schedule, at the rate for operations appropriate given the proposed fiscal year 2011 budget, as augmented by prior year high-level waste (HLW) carryover funds and fiscal year 2010 reprogrammed HLW funds remaining from fiscal year 2010 appropriations.

I fundamentally disagree with the direction contained in the October 4, 2010 memorandum, issued by the Executive Director for Operations and Chief Financial Officer, instructing Staff to follow the Commission's fiscal year 2011 budget direction for carrying out HLW review activities during the continuing resolution. I find this directive inconsistent with the intent of the Continuing Resolution. Section 101 of the Fiscal Year 2011 Continuing Resolution provides that the funds to be appropriated are those "as provided in the applicable appropriations Act for fiscal year 2010 and under the authority and conditions provided in such Acts, for continuing projects or activities . . . that are not otherwise specifically provided for in this Act." Since the Continuing Resolution does not specifically provide for the NRC to follow its fiscal year 2011 budget request, nor does it provide specific limitations on the use of HLW funds, the NRC should continue to carry out the Yucca Mountain review activities in accordance with its fiscal year 2010 budget to "support the ongoing license review by funding the NRC staff conducting technical license application review activities."

In contrast, the fiscal year 2011 budget request – which is currently sitting before Congress – describes the "orderly closure" of technical review activities, including knowledge capture and management, and archiving of material. But this is not all that the fiscal year 2011 budget states with respect to the HLW program. It also explains that "orderly closure" activities are conditioned upon certain events taking place first: "Upon withdrawal or suspension of the licensing review, the NRC would begin an orderly closure..." Neither of these events has occurred, and commencing closure activities now is contrary to the Commission's express direction. Therefore, my view on the appropriate scope of activities under the continuing resolution is further fortified by the fact that the conditions for transitioning to orderly closure of the review have not been met.

Furthermore, at the time of the Commission's deliberations on the fiscal year 2011 budget proposal, the Administration was contemplating options for the Yucca Mountain license application and the Department of Energy (DOE) had not submitted its motion to withdraw. My approval of the fiscal year 2011 budget proposal was predicated on continuing the technical review of the application, while recognizing that the NRC's ability to do so was influenced by other imponderables, such as DOE's ability to support the review. The "fog of war" environment that clouded the future of the Yucca Mountain license application could not, and did not, anticipate with any precision the circumstances that the NRC faces today.

Ultimately, I agree that this is a significant policy matter warranting Commission deliberation and action. In my opinion, we would have been better served had the CR guidance memorandum, at the very least, requested Commission direction on the use of Nuclear Waste Fund resources during the continuing resolution. Absent that request, however, I support fully Commissioner Ostendorff's proposal.



Kristine L. Svinicki 10/19/10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+++++

ALL-HANDS MEETING

+++++

MONDAY

OCTOBER 18, 2010

+++++

ROCKVILLE, MARYLAND

The Commission met in the Grand Ballroom of the Marriott Bethesda North Conference Center, 5701 Marinelli Road, Rockville, Maryland, at 1:30 p.m., Gregory B. Jaczko, Chairman, presiding.

COMMISSIONERS PRESENT

- GREGORY B. JACZKO, Chairman
- KRISTINE L. SVINICKI, Commissioner
- GEORGE APOSTOLAKIS, Commissioner
- WILLIAM D. MAGWOOD, IV, Commissioner
- WILLIAM C. OSTENDORFF, Commissioner

ALSO PRESENT

- BILL BORCHARDT, NRC
- DALE YEILDING, NTEU

PROCEEDINGS

1 COMMISSIONER MAGWOOD: Well, there's several
2 options, and there's actually some initiative that is underway at the
3 Department of Energy to provide grants to look for solutions. Right now,
4 there's a combination of things that are going on, including trying to
5 convert some of the existing research reactors at universities to produce
6 medical isotopes, but there are also industry initiatives underway to
7 develop new reactor-based technologies, and actually some non-reactor
8 technologies to develop, particularly, molybdenum-99. But all these things
9 are still in the pipeline. There's nothing that really solves the problem in
10 the near term.

11 That said, I think that it's something that has finally
12 reached -- gained the kind of attention nationally that it's deserved for a
13 long time. For some of us who were involved in this years ago, it was
14 always very frustrating that we were sort of voices in the dark saying
15 there's a big problem coming down the line here. But now I think it's got a
16 lot of attention. There's resources, so, hopefully, as we go forward in the
17 next several years, there'll be some solutions, as well.

18 AUDIENCE PARTICIPANT: Thank you. For more than a
19 decade, previous Commissions have provided resources and supported
20 the High-Level Waste program as it developed and elaborated a Public
21 Outreach program to interact with stakeholders. And key to that effort was
22 to communicate a message that NRC was an open, and transparent, and
23 independent regulator. And, as part of that, a key message was that the
24 public and stakeholders would have access to the scientific and technical
25 work that staff would do in evaluating a license application for a proposed
26 repository at Yucca Mountain when it was received.

27 I am troubled by the fact that with the recent Commission

1 decision, we are breaking faith with that promise that we made to
2 stakeholders, many of whom are taxpayers and rate payers, who paid for
3 our work, and that they will not have access to the findings, the technical
4 findings that staff has made, and that are ready to be released as Volume
5 III of that work. And I would ask the Commission here today what we
6 should say to those stakeholders, and rate payers, and taxpayers when
7 they ask why can't they have access to that work; understanding that it is
8 not complete, is not part of a final hearing process decision. They
9 understand that, because we spent so much time explaining the hearing
10 process, and explaining what a final decision would have to represent.
11 Thank you.

12 CHAIRMAN JACZKO: Well, I can begin. Of course, if
13 anyone wants to add, feel free.

14 I think as we embark on the effort to look at closing out
15 the program, I think that's an effort that will take some degree of time. I
16 suspect that as we begin to look at the kinds of things that we will make
17 public, and I do believe, as I've talked to many of the staff who work in
18 NMSS, that we should make a lot of information public, and that involves a
19 good degree of the technical information, and the technical review work
20 that the staff has undertaken and completed.

21 I think, my personal views are that there is probably
22 certain information which, at this point, is not complete, and wouldn't be
23 appropriate for publication as part of some kind of information provision, or
24 information document. But, again, I think some of those issues, where that
25 line is, what is exactly the things that shouldn't be provided, and what
26 should be provided, I think that's something that will be more fleshed out in
27 the coming months as the staff begins to look at what, exactly, is entailed

1 in the closeout procedure.

2 So, I think there's -- the bulk of the information will be
3 made public, and I think that's a good thing. I think it's appropriate for
4 people to know the work that we've done as an agency. And I think that
5 that will bear itself out in the future.

6 AUDIENCE PARTICIPANT: When will that be, sir?

7 CHAIRMAN JACZKO: I'm sorry? When?

8 AUDIENCE PARTICIPANT: When will that be, sir?

9 CHAIRMAN JACZKO: Well, I think over the next couple
10 of months we'll be looking at putting together a time line for all the work
11 that needs to be done to do the closeout.

12 AUDIENCE PARTICIPANT: Thank you.

13 COMMISSIONER SVINICKI: I would just add to what the
14 Chairman has commented on, that my view was different in my vote in
15 support of Commissioner Ostendorff's COM. I indicated my personal view
16 that the best way to memorialize the staff's work would be to publish
17 Volume III of the SER with the findings, so I -- it's my hope that as the
18 Commission looks more closely at the staff's recommendation on the
19 appropriate scope of closeout activities, as the Chairman has mentioned, I
20 hope that we'll continue to analyze this particular question. That's my
21 personal view.

22 AUDIENCE PARTICIPANT: In your opinion, what is the
23 biggest non-technical threat to the nuclear renaissance, some examples
24 being politics, economy, and workforce issues.

25 CHAIRMAN JACZKO: Well, I'll share my opinion first.
26 Then, of course, any others like to chime in. And, again, these questions
27 are always difficult, because it's very tempting to want to get in the middle

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
 Paul S. Ryerson
 Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

February 25, 2011

ORDER

(Directing NRC Staff's Show Cause)

On February 17, 2011, the NRC Staff filed a notification stating that, on that same date in response to a Freedom of Information Act request, it had "made available redacted copies of preliminary drafts of Volumes 2 and 3 of the SER."¹ Previously, the Staff notified the Board on the penultimate day of the Staff's schedule for issuing Volume 3 of the SER, that it would not meet its longstanding schedule and on December 8, 2010, the Board directed the Staff to provide an explanation of its last minute schedule change.²

Nothing in the Staff's December 22, 2010 purported explanation for its last minute schedule change, or in the various documents the Staff quotes and cites therein, sheds light on how SER Volume 3, on the day before it was long scheduled to be issued, comports with the Staff's characterization of SER Volume 3 being a preliminary draft. Accordingly, the Staff shall, by March 3, 2011, show cause why the Staff should not be ordered to place, in unredacted form

¹ NRC Staff Notification of Disclosure Pursuant to Freedom of Information Act (Feb. 17, 2011).

² See CAB Order (Addressing Nevada's Motion and Discovery Status) (Dec. 8, 2010) at 2 (unpublished). In that order, the Board noted that the Staff had informed the Board at the January 27, 2010 case management conference that the Staff's schedule for issuing SER Volume 3 had slipped from September 2010 to November 2010, a date the Staff confirmed at the June 4, 2010 case management conference. The Staff had initially established the September 2010 issuance date for SER Volume 3 in its July 10, 2009 filing answering Board questions. *Id.* at 1-2 (internal citations omitted).

except for classified and safeguards information, Volume 3 of the SER in its LSN document collection as circulated draft documentary material in accordance with 10 C.F.R. § 2.1001 and its continuing obligation to "make a diligent good faith effort to include all after-created . . . documents as promptly as possible in each monthly supplementation of documentary material."³

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 25, 2011

³ Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) at 21 (unpublished). See CAB Case Management Order #1 (Jan. 29, 2009) at 2 (unpublished).

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

February 10, 2011

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

President Obama entered office with a commitment to make his administration "the most open and transparent in history."¹ In a Presidential Memorandum issued to Executive Branch agencies on his first day in office, the President said:

In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.²

It is in the spirit of these commendable principles that we request the immediate release of Volume III of the "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada" (SER).

As you know, Volume III of the SER addresses post-closure scientific and technical issues associated with the storage of high-level waste, which provide the necessary underlying scientific evaluation for a national repository located at Yucca Mountain. Public disclosure of the report and the NRC staff's key findings is necessary to ensure fully informed consideration of science and technology policy issues surrounding this matter. As Members of the Committee on Science, Space, and Technology, we are responsible for the examination and oversight of these topics.³

In a June 3, 2010 hearing before the Atomic Safety and Licensing Board, NRC staff testified that Volume III would be "completely drafted" no later than August 2010, and would be published shortly thereafter.⁴ Commissioner Ostendorff affirmed this timeline in later correspondence with

¹ Statement from the President on the First Time Disclosure Policy for White House Visitor Logs, September 4, 2009.

² "Memorandum for the Heads of Executive Departments and Agencies,"

<http://www.whitehouse.gov/the-press-office/freedom-information-act>

³ "Rule X 3(k): Organization of Committees" included in the *Rules of the House of Representatives* (112th Congress).

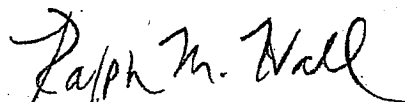
⁴ NRC ASLB, Transcript of Administrative Proceedings at p. 328-329, Docket No. 63-001 ASLBP 09-892-HLW-CAB04 (June 3, 2010).

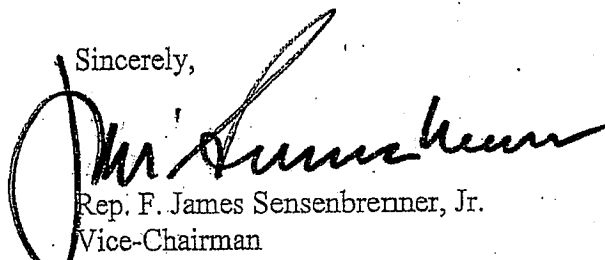
Congress, noting that SER Volume III was transmitted to the Director of the NRC Office of Nuclear Material Safety and Safeguards for concurrence and authorization to publish on July 15, 2010.⁵

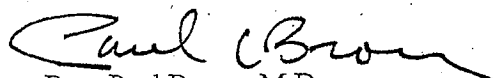
Disturbingly, however, in October 2010, you directed commission staff to halt all activities on the High Level Waste Program. This unilateral political decision appears to form the basis for the NRC's refusal to release SER Volume III. It shouldn't. Such actions are wholly inconsistent with the President's principles on openness and scientific integrity, and unnecessarily serve to obstruct and delay informed policy decisions regarding the future of the Yucca Mountain license application.

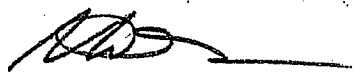
We recognize that Congress⁶ and other NRC commissioners⁷ have expressed serious concerns regarding the legality of and justifications for your order. These concerns are important and must be resolved, but their resolution should have no bearing on the Commission's ability to release SER Volume III in a timely manner.

Accordingly, we request the Commission immediately publicly release Volume III of the SER. Further, provide to the Committee all documents (as defined by the attachment) related to the SER release, as well as an update on the current status of the remaining volumes by February 24, 2011. Should you have any questions, please contact Mr. Andy Zach, with the Energy and Environment Subcommittee, or Mr. Tom Hammond, with the Investigations and Oversight Subcommittee, at (202) 225-6371.


Rep. Ralph M. Hall
Chairman
Committee on Science, Space,
and Technology

Sincerely,

Rep. F. James Sensenbrenner, Jr.
Vice-Chairman
Committee on Science, Space,
and Technology


Rep. Paul Broun, M.D.
Chairman
Subcommittee on Investigations
and Oversight
Committee on Science, Space,
and Technology


Rep. Andy Harris
Chairman
Subcommittee on Energy and Environment
Committee on Science, Space,
and Technology

⁵ Letter from Commissioner Ostendorff to Representative Hastings, October 27, 2010.

⁶ Letter from Reps. Ralph Hall, Jim Sensenbrenner, Joe Barton, and Doc Hastings to NRC Chairman Jaczko, October 13, 2010 (copy attached).

⁷ Memorandum from Commissioner Ostendorff to Chairman Jaczko, Commissioners Svinicki, Apostolakis, and Magwood, "Disagreement With Staff Budget Guidance Under Fiscal Year 2011 Continuing Resolution." October 8, 2010.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

February 18, 2011

COMMISSIONER

The Honorable Ralph M. Hall
Chairman, Committee on Science, Space,
and Technology
United States House of Representatives
2321 Rayburn House Office Building
Washington, DC 20515-6371

Dear Congressman Hall:

I am writing in response to your letter of February 10, 2011, in which you request the immediate release of Volume III of the "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada" (SER), all documents related to the SER, as well as an update on the current status of the remaining volumes of the SER.

The NRC technical staff has had the responsibility for the development and publication of Volume III of the Yucca Mountain SER. Commissioners normally do not receive an SER or portion thereof until it is finalized and made public. This is particularly important when a contested adjudicatory proceeding is pending, such as the High Level Waste Repository proceeding, in which I served notice of my recusal in July of 2010. My understanding of the current status of Volume III is that the staff is no longer working toward its completion as a consequence of budget guidance issued on October 4, 2010. Rather, the staff is taking steps toward closure of the Yucca Mountain program. This would include preservation of the staff's work products such as draft Volume III and completion and implementation of a plan to document the staff's review and other knowledge concerning the program. I have, however, been made aware that in response to a request submitted pursuant to the Freedom of Information Act, the staff made available redacted copies of drafts of Volumes II and III of the SER. These documents are posted in the Publicly Available Records System (PARS) of the Commission's Agencywide Documents Access and Management System (ADAMS), Accession Number ML110480651.

I understand that your requests have also been referred to the NRC's Office of Congressional Affairs. I appreciate your interest in the work of the NRC.

Sincerely,

A handwritten signature in black ink, appearing to read "George Apostolakis", written over a faint background of a signature strip.

George Apostolakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

COMMISSIONER

February 23, 2011

The Honorable Ralph M. Hall
Chairman, House Committee on Science,
Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515-6301

Dear Congressman Hall:

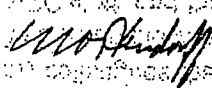
Thank you for your letter dated February 10, 2011. The NRC's handling of the licensing of the High-Level Waste (HLW) repository at Yucca Mountain is of great concern to me as a Commissioner. My position has consistently been that the NRC staff should complete and publicly issue the Safety Evaluation Reports (SERs) associated with Yucca Mountain. As noted in your letter, my memos of October 6, 2010, and October 8, 2010, as well as my October 27, 2010 letter to Congressman Hastings outline my position on this matter, and those views have not changed.

In recent months, I have repeated my views to my colleagues that the Commission should direct the staff to complete and publicly issue the SERs. Yet, as an individual Commissioner I lack the legal authority to unilaterally direct any action by the NRC staff, and thus cannot alone order issuance of any SER volume or related documents. The law requires that a majority of my colleagues agree with my opinion that the Commission should take action.

Regarding your request for public release of SER Volume 3 and all documents related to the SER release, the NRC released a redacted version of SER Volumes 2 and 3 on February 17, 2011, pursuant to a FOIA request. You also requested an update on the current status of the remaining volumes of the SER. Consistent with Commission procedures, I have referred your request to the NRC's Office of Congressional Affairs to provide you with a copy of a February 4, 2011 memorandum to the Commission from the Director of the Office of Nuclear Materials Safety and Safeguards titled "Update on the Yucca Mountain Program." This document provides a more complete description of the status of the SER volumes.

I am available to respond to any further inquiries you may have on this matter.

Sincerely,


William C. Ostendorff

Identical letter to:

The Honorable F. James Sensenbrenner, Jr.
Vice-Chairman, Committee on Science,
Space, and Technology
2321 Rayburn House Office Building
Washington, D.C. 20515-6301

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on Investigations and Oversight
Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, D.C. 20515-6301

The Honorable Andy Harris
Chairman, Subcommittee on Energy and Environment
Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, D.C. 20515-6301



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

COMMISSIONER

February 25, 2011

The Honorable Ralph M. Hall
Chairman, House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hall:

I am writing in response to your letter of February 10, 2011, regarding release of Volume 3 ("Review of Repository Safety after Permanent Closure") of the "Safety Evaluation Report (SER) Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada" and the status of U.S. Nuclear Regulatory Commission (NRC) activities related thereto. Thank you for soliciting my individual views, as a member of the Commission.

As I outlined to Congressman Hastings in a November 1, 2010 letter (enclosed), subsequent to the decision by NRC Chairman Gregory Jaczko to direct the closure of NRC's High-Level Waste program, Commissioner William Ostendorff formally proposed that the Commission revisit the Chairman's direction, and establish a new direction to explicitly instruct the NRC staff to continue towards its scheduled release of Volume 3 of the Yucca Mountain SER. I voted in support of this proposal; however, the remainder of the Commission declined to participate in the matter, depriving the proposal of a quorum needed for action. In my vote, I stated that "whatever the ultimate disposition of the Yucca Mountain license application and associated activities, complete SER documents should be a matter of public record and will be the best vehicle to memorialize the scientific knowledge and analysis gained during the technical review."

I continue to hold my previously-stated views. As an individual Commissioner, however, I currently have no access to, or authority over, Volume 3 of the SER. There has been no majority, to this point, to overturn the current plan to shut down the program. The Commission continues internal deliberations related to the NRC staff's High-Level Waste program activities. As an example, I am enclosing an excerpt from the transcript of the October 18, 2010 NRC All-Hands Meeting, which touches on this issue.

My understanding of these plans and the current status of remaining SER volumes is, as follows. Since ceasing its safety review of the Yucca Mountain license application on October 1, 2010, the NRC staff has been converting the remaining SER volumes (Volume 3: Review of the Repository Safety after Permanent Closure, Volume 2: Review of Repository Safety before Permanent Closure, and Volume 4: Review of Administrative and Programmatic Requirements) into technical evaluation reports. This conversion involves the removal of any staff findings of regulatory compliance from the SER volumes. The resulting technical evaluation reports are intended to be made publicly available by the NRC as knowledge management tools. Also, in response to a request under the Freedom of Information Act, the staff made available redacted copies of Volumes 2 and 3 of the SER in the NRC's Publicly Available Record System. In a related action, on February 25, 2011, the Atomic Safety and Licensing Board issued an order

(also enclosed) in the high-level waste licensing adjudicatory proceeding, directing the NRC staff to show cause why the staff should not be ordered to place, in unredacted form except for classified and safeguards information, Volume 3 of the SER in its Licensing Support Network document collection as circulated draft documentary material.

I respectfully acknowledge that differences of opinion exist among policy makers, and the public, regarding the Nation's nuclear waste program. These matters will be addressed in appropriate venues, as they should. As a personal view, however, I agree with the statement of Dr. John P. Holdren, the Director of the Office of Science and Technology Policy, in his memorandum on the subject of scientific integrity, where he states, "Open communication among scientists and engineers, and between these experts and the public, accelerates scientific and technological advancement, strengthens the economy, educates the Nation, and enhances democracy." I am committed to working with my colleagues on the Commission to advance this principle.

Respectfully,



Kristine L. Svinicki

Enclosures: as stated



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 4, 2011

The Honorable Ralph M. Hall
Chairman, Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your Committee's interest in the Nuclear Regulatory Commission's (NRC) actions regarding the Yucca Mountain license application. I am providing the agency's response to your letter dated February 10, 2011, requesting the public release of Volume III of the Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada (SER Volume III). I am pleased to inform you that in response to an earlier Freedom of Information Act request, the NRC released redacted versions of SER Volumes II and III on February 17, 2011.

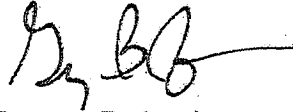
These SER volumes were in a draft stage when the agency transitioned to closure activities associated with the Yucca Mountain license application five months ago. Because the review of these documents had not been completed by pertinent NRC staff, portions related to preliminary staff findings and conclusions were appropriately redacted as pre-decisional material prior to their public release consistent with FOIA law.

Because of the Commission's role as an appellate body for decisions made by the NRC's Atomic Safety and Licensing Board during hearings on the application that would focus on findings in the SER, not even my colleagues and I have had access to these predecisional draft staff documents in their unredacted form. Release of those portions not already made public through the FOIA process would complicate and extend an already complex proceeding involving more than three hundred admitted contentions. It would create confusion associated with any changes between the draft and potential final versions and could thus be expected to invite a stream of needless litigation regarding the basis for any changes. Historically, members of Congress and its committees have rarely requested these types of pre-decisional draft documents which pertain to license applications that are related to an adjudication.

I can assure you that the NRC staff is currently working to thoroughly document its technical review so that the work of the agency is well documented and available to the public.

Thank you for your interest in the NRC and our work. I understand that the Office of Congressional Affairs and your staff have regular discussions and we will continue to update them about our work. I would be happy to discuss this matter with you directly, either by phone or in person as your schedule allows. Please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. B. Jaczko', with a long horizontal flourish extending to the right.

Gregory B. Jaczko

cc: Representative Eddie Bernice Johnson

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

March 10, 2011

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

We write to follow-up to your March 4, 2011 response to our February 10, 2011 letter requesting the release of Volume III of the "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada" (SER Volume III).

You state in your letter that you will not release the document because its review has not been completed. However, as we noted in our original letter, the reason the report may not be considered complete is because you unilaterally and arbitrarily terminated work on the final review process shortly before its scheduled November 2010 release.

We have repeatedly expressed our concern regarding your directive to halt work on SER Volume III and close down the High-Level Waste Program (HLW).¹ These actions, coupled with the U.S. Nuclear Regulatory Commission's (NRC) deafening silence in response to the Atomic Safety and Licensing Board's (Board) June 29, 2010 denial of the Department of Energy's (DOE) motion to withdraw the License Application, reveal a process driven by a systematic and politically-driven effort to terminate NRC responsibilities on Yucca Mountain, rather than an objective pursuit to resolve the scientific and technical questions associated with the site's suitability.

Accordingly, we reiterate our call for delivery of an unredacted copy of SER Volume III in order to fulfill our oversight responsibilities under House Rule X to review and study, on a continuing basis, laws, programs, and Government activities relating to non-military research and development, and ultimately to inform the legislative process. Absent an immediate production of the document, please cite the exemption you are claiming along with an explanation of the claim. Furthermore, please provide to the Committee in its entirety, including all non-concurrences, the February 4, 2011 memorandum titled "Update on the Yucca Mountain Program," as referenced by Commissioner Ostendorff.² Please deliver these materials by March 17, 2011.

¹ Letter from Reps. Ralph Hall, Jim Sensenbrenner, Joe Barton, and Doc Hastings to NRC Chairman Jaczko, October 13, 2010. Also, letter from Reps. Ralph Hall, Jim Sensenbrenner, Paul Broun and Andy Harris to NRC Chairman Jaczko, February 10, 2011.

² Letter from Commissioner Ostendorff to Reps. Ralph Hall, Jim Sensenbrenner, Paul Broun and Andy Harris, February 23, 2011.

The Honorable Jaczko
March 10, 2011
Page two

Additionally, we repeat our request for all documents and communication from you relating to the completion and release of SER Volume III. Should you withhold documents, please provide to the Committee an indexed list of documents withheld and the reason for doing so.

In addition, please respond to the following questions.

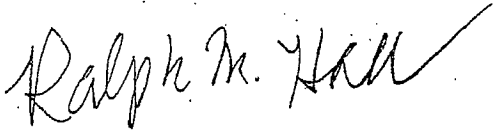
- 1.) Is your decision to bring the HLW program to a close the only hindrance to timely review of SER Volume III? If not, please identify and explain the other barriers to timely review?
- 2.) What work was undertaken on SER Volume III between its delivery to the Director of the Office of Nuclear Material Safety and Safeguards in July 2010 and October 2010, when you unilaterally halted work on the HLW program?
- 3.) Please explain your reasoning behind your refusal to participate in Commissioner Ostendorff's proposal for the full Commission to consider your October decision to halt work on the HLW program?
- 4.) What specific communication did you or your staff have with NRC Staff relating to the schedule, review or approval of SER Volume III?
- 5.) What ongoing reviews of the draft SER Volume III were in progress at the time of the NRC Staff Notification Regarding SER Schedule on November 29, 2010, as described in the Staff's March 3, 2011 reply to the Board?³
- 6.) In October, you noted "No specific actions have yet been taken to terminate the program."⁴ Since then, what specific actions have been taken or will be taken to terminate review of the license application, including all actions related to Staff review of the application?

Lastly, we once more strongly urge you to allow NRC Staff to complete review of SER Volume III and make a full, final document publicly available. Please respond to the above questions by March 24, 2011. Should you have any questions, please contact Mr. Andy Zach, with the Energy and Environment Subcommittee, or Mr. Tom Hammond, with the Investigations and Oversight Subcommittee, at (202) 225-6371.

³ NRC Staff, NRC Staff Response to February 25, 2011, Board Order, Docket No. 63-001-HLW ASLBP No. 09-892-HLW-CAB04 (March 3, 2011) at p. 8

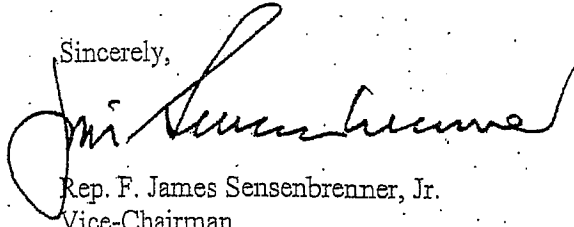
⁴ Letter from Chairman Jaczko to Reps. Ralph Hall, Jim Sensenbrenner, Doc Hastings and Joe Barton, October 27, 2011.

The Honorable Jaczko
March 10, 2011
Page three



Rep. Ralph M. Hall
Chairman
Committee on Science, Space,
and Technology

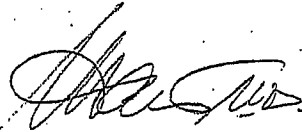
Sincerely,



Rep. F. James Sensenbrenner, Jr.
Vice-Chairman
Committee on Science, Space,
and Technology



Rep. Paul Broun, M.D.
Chairman
Subcommittee on Investigations
and Oversight
Committee on Science, Space,
and Technology



Rep. Andy Harris
Chairman
Subcommittee on Energy and Environment
Committee on Science, Space,
and Technology

cc: The Honorable Steven Chu
Secretary of Energy

The Honorable William C. Ostendorff
Commissioner, U.S. Nuclear Regulatory Commission

The Honorable George Apostolakis
Commissioner, U.S. Nuclear Regulatory Commission

The Honorable Kristine L. Svinicki
Commissioner, U.S. Nuclear Regulatory Commission

The Honorable William D. Magwood, IV
Commissioner, U.S. Nuclear Regulatory Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

April 28, 2011

The Honorable Ralph M. Hall
Chairman, Committee on Science, Space,
and Technology
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your March 10, 2011, letter requesting an unredacted copy of the draft Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain application. As I explained when I informed you of the public release of a redacted version, in my letter of March 4, 2011, the SER volume had not been through final agency review. Therefore, the findings and conclusions in the document are preliminary. The redacted portions represented the predecisional findings and conclusions we normally protect from public release consistent with the Freedom of Information Act.

Since that time, the Commission has received additional Congressional requests for the unredacted copy of the draft SER Volume III. In response, I have reiterated my belief that public release of preliminary staff findings and conclusions establishes a dangerous agency precedent. The staff's preliminary findings may turn out to be incorrect or incomplete. As such, they can mislead or confuse the public. Even my colleagues and I have not had access to the redacted portions of SER Volume III. As the appellate body for the agency, the Commission does not have access to predecisional, non-public information regarding the staff's substantive review of the Yucca Mountain application.

Notwithstanding my reservations, a majority of the Commission is willing to provide unredacted copies in response to Congressional Committee requests provided that they are held in confidence. I have accordingly directed our Office of Congressional Affairs to provide you with an unredacted copy today. I do so with the request that you and your staff will respect the potential adverse impact of public release and safeguard this information accordingly.

Regarding your specific questions about the close out of our Yucca Mountain support activities and SER Volume III, my responses are provided below:

- 1) Is your decision to bring the HLW program to a close the only hindrance to timely review of SER Volume III? If not, please identify and explain the other barriers to timely review?

The transition to close out of Yucca Mountain licensing support activities prompted a number of agency initiatives, including the development of a technical evaluation report (TER) to document and preserve all of the staff's review conducted to date. This is distinguished from the SER, which would set forth the staff's regulatory findings that are subject to review by the Licensing Board in the hearing and the Commission on appeal. Since the TER will serve as the final agency documentation on the Yucca Mountain license application, further review activities to support the SER were no longer necessary.

- 2) What work was undertaken on SER Volume III between its delivery to the Director of the Office Nuclear Materials Safety and Safeguards in July 2010 and October 2010, when you unilaterally halted work on the HLW program?

As discussed above, because of the Commission's role as the appellate body for the agency, I have no specific knowledge of the technical work conducted by the staff during that time.

- 3) Please explain your reasoning behind your refusal to participate in Commissioner Ostendorff's proposal for the full Commission to consider your October decision to halt work on the HLW program?

My decision not to participate on the proposal was based on my judgment that it did not raise a policy matter warranting Commission action. Since a majority of the Commission did not participate in this matter, the proposal was rejected.

- 4) What specific communication did you or your staff have with NRC Staff relating to the schedule, review or approval of SER Volume III?

On June 11, 2010, I issued a memorandum directing the staff to stay on the established review schedule, which is attached. I also met with the staff of the Division of High Level Waste in the Office of Nuclear Materials Safety and Safeguard (NMSS) on June 24, 2009 and October 12, 2010, to discuss developments related to the future of the Yucca Mountain program.

- 5) What ongoing reviews of the draft SER Volume III were in progress at the time of the NRC Staff Notification Regarding SER Schedule on November 29, 2010 as described in the Staff's March 3, 2011 reply to the Board?

During that time, the staff transitioned from licensing support activities, including development of an SER, to close out activities.

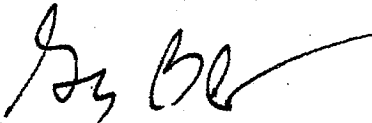
- 6) In October, you noted "No specific actions have yet been taken to terminate the program." Since then, what specific actions have been taken or will be taken to terminate review of the license application, including all actions related to Staff review of the application?

As explained in my response to an earlier letter on the matter (attached), at the beginning of the new fiscal year, the staff began the process of transitioning to close-out of the Yucca Mountain program consistent with Commission policy, the general principles of appropriation law, and applicable guidance from the Office of Management and Budget and the Government Accountability office on expenditure of funds under continuing resolutions. At that time, the staff began the process of documenting and preserving the staff's review, including the development of a technical evaluation report (TER). The agency will continue and conclude these close-out activities consistent with the recently enacted Fiscal Year 2011 appropriations law.

You have also asked for documents and communications relating to the completion and release of SER Volume III. The Commission is currently identifying documents related to these matters. I understand that the Office of Congressional Affairs and your staff have regular discussions and will continue to update you on our progress on your document requests.

I appreciate your continuing interest in these matters and would be happy to discuss them with you directly, either by phone or in person as your schedule allows. Because neither I nor my fellow Commissioners have access to SER Volume III in unredacted form, I cannot discuss any the staff's preliminary findings or conclusions in the draft SER. Should you have any additional questions on the agency's processing of the document, however, please let me know.

Sincerely,



Gregory B. Jaczko

cc: Representative Eddie Bernice Johnson

Appendix E. Documents

Miller, Warren

From: Warren F. Miller, Jr. [wmiller@ne.tamu.edu]
Sent: Wednesday, July 15, 2009 8:46 AM
To: Miller, Warren
Subject: FW: Call me please

From: Warren F. Miller, Jr.
Sent: Tuesday, July 14, 2009 3:20 PM
To: Per F. Peterson
Subject: RE: Call me please

Per:

See my comments below.

I hope we save this email exchange for late Sept or my trip in November.

Regards

Pete

From: Per F. Peterson [peterson@nuc.berkeley.edu]
Sent: Tuesday, July 14, 2009 10:53 AM
To: Warren F. Miller, Jr.
Subject: RE: Call me please

Pete,

Indeed, I'm back as Dept. chair as of July 1; Jasmina had finished her term (4 years is enough for anyone). I'm signed up for 2 years, long enough for Brian Wirth to reach full professor and step in. Our state budget situation is very grim, but we did just conclude a successful search and will be hiring a very bright young nuclear materials experimentalist, Peter Hoseman, from LANL, giving us a strategic capability in the nuclear materials area.

My next DC trip is Sept 30-Oct. 1, for the Fission/Fusion Hybrid workshop that I've been asked to participate in. Also, UCB is definitely in session Nov. 23-25, and it would be great to see you then. Might you be interested in giving our department colloquium that Monday afternoon (4-5p)?

I think I will be around for the fission/fusion workshop. A trip to India during that time is possible. Tentatively, I can agree to a Dept Colloquium on Monday, the 23rd.

Here are the main things I've been thinking about/working on that I'd like to brief you on:

1) Blue Ribbon Commission. I started corresponding with John Holdren (in his position leading the National Commission on Energy Policy) back in October, 2008, about the scientific integrity problem that would emerge if a new Obama administration were to withdraw the Yucca Mountain license application and thus stop the independent NRC technical review of that application. I recommended that instead the administration focus on fixing the Nuclear Waste Policy Act, which is highly flawed. I think that there is a politically, technically and scientifically viable approach to amending the NWPA, but that it really does have to be a comprehensive amendment that fixes many things at once, and that does not single out any individual state to shoulder an unfair portion of the burden (nor receive a disproportionate share of the benefits). I had the opportunity to

brief Senator Ensign's staffers on this in February, and have a set of slides that outline potential ingredients to an amendment that I can send (I've not distributed them except to very selected people). Clearly, fixing U.S. nuclear waste and fuel cycle policy could be transformational to nuclear energy in the U.S., and this is probably the most important opportunity/responsibility facing the administration over its first term.

Yes, by all means. Please send me the slides and I will not distribute them any further. Fixing the waste policy act before the Blue Ribbon Commission reports out is going to be very tough sledding. Congress can easily say "why act before we get input for the Commission."

2) Next Generation Nuclear Plant. I agree strongly with the recent decision to reduce the design outlet temperature for the NGNP to 750°C to 800°C, and to shift focus toward steam generation that could enable near-term co-generation of electricity and process steam. A key next step, which I believe is being discussed within the NGNP project, is to work with the NGNP industrial partnership to develop an industry/government partnership to develop Early Site Licenses for 2-4 sites for co-located modular reactors and chemical facilities, for co-generation of electricity and process heat. There are a large number of reasons why moving now to develop a set of ESL's is the correct next step. First, this same type of process worked extraordinarily well under the DOE 2010 program to relaunch the construction of new LWRs, because it created a pool with multiple potential customers, which in turn incentivized the entry of multiple vendors into the market. Second, it expands greatly the future potential for nuclear to reduce carbon emissions, by enabling nuclear energy to be used to reduce the carbon intensity of transportation fuels and chemicals (near term with process steam, long term with hydrogen). Third, it creates a new market where modular reactors are displacing natural gas, and thus can earn much higher revenues than in the traditional electricity generation market where one displaces coal (a cheaper fuel). Creating a commercial entry point for smaller reactors is likely to greatly accelerate the evolution of the technology, and will receive substantial political support from all constituencies who are interested in developing new reactor concepts (including the financial backers of the NuStart and Terrapower start ups, as well as B&W which has recently announced that it is developing a new modular LWR design). Steve Koonin could be a good resource on this, given his experience at BP (I had a long conversation with him in March, 2008) DOE could also consider entering into a couple of partnerships with MHR reactor vendors to support the completion of design certifications (similar to what was done during the ALWR program).

I would love to chat with you about NGNP as well as what is the right role for DOE to accelerate commercialization of small/modular reactors. The later is becoming an increasingly important subject.

3) U.S. Nuclear Regulatory Commission. There are a number of issues associated with the USNRC's level of preparation and capability to receive license applications for new, non-water-cooled reactor designs. Ultimately this requires an increase in the resources going to the USNRC Office of Regulatory Research for this purpose. Right now the USNRC is required to recover 90% of its budget from fees to utilities and vendors, which greatly restricts its capacity to do the work needed, and only Congress can change appropriations for the USNRC. I spoke with Steve Chu on this, who noted that DOE can only influence this directly, but I see the issue of increasing the USNRC ORR budget to be a key one if advanced reactor technologies are to be licensed successfully in the future.

This is, again, a high priority topic. Not sure what can be done in 2010 but it is on the

table in 2011. Glad to discuss.

4) Advanced Reactor and Fuel Cycle R&D. Here you will clearly be getting a lot of advice. I'll have to put in a plug for the work we have been doing in collaboration with Oak Ridge on the Advanced High Temperature reactor, which is a fluoride-salt cooled reactor using TRISO pebble fuel and a thorium power cycle. We've made substantive advances (<http://nuc.berkeley.edu/pb-ahtr>) and it's worth being briefed and seeing some of our experimental work (we could do this during your visit in November). I sit on nuclear energy related review committees for INL, ORNL, PNNL, and LLNL. There is a lot of good work going on out there. But in the thermal hydraulics area I would commend to your attention INL's LDRD effort to develop a completely new version of RELAP (R7), using modern object oriented programming methods and integrating capabilities for validation and uncertainty quantification into the code. As you likely know, several years ago the USNRC dropped RELAP5 in favor of developing their own internal code TRACE. This new R7 effort has the potential to leapfrog completely past TRACE and become the primary analysis tool used in the future by vendors and the DOE to license new reactor designs. They have a development team with some highly gifted people, including the brightest PhD student I ever graduated (Haihua Zhao).

Again, not sure about 2010 but revolutionary reactor design support is something I am pushing for in future years.

These are the top level ideas/recommendations I have. As an aside, I was at a "Science Foo" conference this weekend at Google presenting on some of our UCB work on fluoride salt cooled thorium reactors, and the talk was attended by Larry Page (Google founder), Bob Metcalf (major venture capitalist), Elon Musk (founder of PayPal and SpaceX), Stewart Brand (Whole Earth catalog), Tim O'reilly (major publisher), Bill Nye (Science celebrity), Ed Yu (former astronaut, now at Google), and other very interesting people. We are working in a rapidly evolving world where highly influential people are becoming very interested in nuclear energy and its potential future role to support economic development while meeting carbon emission goals. Very interesting.

The same thing is happening in DC. Nuclear is on a big roll right now. There is excitement around innovation as well as near term deployment.

Warm regards, Per

Hi Per:

Heard you are now Department Chair again---congratulations????

Happy to talk to you via phone or in person. When is your next DC trip?

I plan to visit the Bay Area Thanksgiving week (is UCB in session on the 23rd, 24th and 25th of November?)

Pete

From: Per F. Peterson [peterson@nuc.berkeley.edu]
Sent: Monday, July 13, 2009 11:20 PM
To: Warren F. Miller, Jr.
Subject: Re: Call me please
Dear Pete,

I hope that you are doing well. I expect that you're busy, and that waiting for the Senate confirmation process to move forward must be tedious too.

I'm sure that you've had quite a few people offering you their two cents, but at an appropriate time I'd also appreciate the opportunity to do so as well.

Cheers, Per

Per:

Please give me a call at 505-362-1180 as soon as it is convenient.

Thanks

Pete

--

Per F. Peterson
Professor and Chair
Department of Nuclear Engineering
University of California
4111 Etcheverry Hall
Berkeley, California 94720-1730
peterson@nuc.berkeley.edu
Office: (510) 643-7749 Fax: (510) 643-9685
http://www.nuc.berkeley.edu/People/Per_Peterson

--

Per F. Peterson
Professor and Chair
Department of Nuclear Engineering
University of California
4111 Etcheverry Hall
Berkeley, California 94720-1730
peterson@nuc.berkeley.edu
Office: (510) 643-7749 Fax: (510) 643-9685
http://www.nuc.berkeley.edu/People/Per_Peterson

Nagler, Asaf

From: Johnson, Kristina
Sent: Monday, October 12, 2009 9:01 PM
To: 'petemiller350@comcast.net'; 'chris.kouts@hq.doe.gov'
Cc: 'peterlyons4@gmail.com'; Lyons, Peter; Nagler, Asaf
Subject: Re: FY 11 OCRWM Budget

Dear All- i would like for us to meet this week on this topic- would thursday or friday work for all? Thanks- Kristina

From: warren miller <petemiller350@comcast.net>
To: Johnson, Kristina; chris.kouts@hq.doe.gov <chris.kouts@hq.doe.gov>
Cc: peter lyons <peterlyons4@gmail.com>; Lyons, Peter
Sent: Mon Oct 12 20:57:32 2009
Subject: Fw: FY 11 OCRWM Budget

Kristina and Chris:

Per is a distinguished member of the academic community. Steven Chu, John Holdren (and I) very much trust his judgement. I think we should take his advice very, very seriously.

Pete
----- Original Message -----

From: Per F. Peterson
To: Pete Miller ; Pete Lyons
Sent: Monday, October 12, 2009 8:12 PM
Subject: Fwd: FY 11 OCRWM Budget

Dear Pete and Pete,

Per the email below, I've had some correspondence with people in the repository science community who are concerned that the administration's FY 11 budget for OCRWM could, beyond stopping funding for the Yucca Mountain license review, also stop funding for electronic records QA, long-term corrosion experiments, and sample storage, and thus destroy the base of scientific and technical data that underlies the application.

I note that this action would be essentially equivalent to burning the books, with all of the negative implications that the analogy implies.

My hope would be that the administration's budget recommendation would provide ample funding for a program to sustain OCRWM capability and knowledge in repository science, as well as capability and knowledge held in the NRC and NWTRB.

An administration policy, to sustain core U.S. repository science capability and knowledge, would be consistent with administration expectations that Congress should work to amend the NWPA after recommendations become available from the BRC.

In speaking with Steve Kraft from NEI today, it is clear that the commercial industry is nervous about the administration's support for nuclear energy, which has a negative impact on decisions to move forward to deploy new plants. In this context, it could be helpful to have a clear direction to sustain the capacity to study and develop geologic repositories, while U.S. policy on spent fuel and high level waste management remains under review.

-Per

Date: Mon, 12 Oct 2009 15:36:32 -0700
To: Holdren.John, Chu.Steve
From: "Per F. Peterson" <peterson@nuc.berkeley.edu>
Subject: FY 11 OCRWM Budget

Dear John and Steve,

Thank you for the opportunity to participate by phone in the NE meeting last Tuesday.

On a related topic, within the repository science community there is now discussion going around about the administration's potential FY-11 budget request for OCRWM. Senator Reid had announced at the end of July that the administration will zero funding for the review of the Yucca Mountain license application.

While stopping the license review would be one thing, the larger question relates to the fate of the scientific and technical information that supports the license application. If Quality Assurance (QA) controls are stopped on the electronic records, long-term corrosion experiments stopped, and samples in storage discarded, the scientific data base that supports the current license application and understanding of the site would be destroyed.

The analogy that is emerging is that the administration might "burn the books" on the scientific work that has been done for Yucca Mountain. The loss of YM scientific and technical data would be pretty clearly analogous to the loss of knowledge that occurred with the burning of the scrolls in the Library of Alexandria (it might also invite more unsavory, if less accurate, analogies to book burning in Germany in 1933). Overall, it's bad idea to allow this base of U.S. repository scientific and technical knowledge to be destroyed.

My recommendation is that even though the FY 11 budget request may stop the current license application review, that the budget contain substantial funding to OCRWM and some to NRC and NWTRB to sustain knowledge and capability in repository science.

It would also be great if the stated administration policy would be to sustain OCRWM knowledge and capability until Congress amends the NWPA to provide the DOE with guidance on how to move forward with management of spent fuel and high level waste. This policy to sustain repository science would help make it clear that the Administration expects Congress to take action to act on recommendations of the BRC and create a new policy framework for managing spent fuel and high level waste by amending the NWPA.

Thank you for taking these issues into consideration.

Warm regards, Per

--

Per F. Peterson
Professor and Chair
Department of Nuclear Engineering
University of California
4153 Etcheverry Hall
Berkeley, California 94720-1730
peterson@nuc.berkeley.edu
Office: (510) 643-7749 Fax: (510) 643-9685
http://www.nuc.berkeley.edu/People/Per_Peterson

Per F. Peterson
Professor and Chair
Department of Nuclear Engineering
University of California
4153 Etcheverry Hall
Berkeley, California 94720-1730
peterson@nuc.berkeley.edu
Office: (510) 643-7749 Fax: (510) 643-9685
http://www.nuc.berkeley.edu/People/Per_Peterson

U.S. nuclear waste policy: scientific integrity, policy and politics

Per F. Peterson
Department of Nuclear Engineering
University of California, Berkeley
peterson@nuc.berkeley.edu

January 28, 2009

One sentence summary:

A comprehensive amendment of the U.S. Nuclear Waste Policy Act provides the only viable path forward to a functional U.S. policy for nuclear waste.

Proposed Policy Forum Article:

The Obama administration will soon face the first major test of its stated commitment to scientific integrity, when it will release a detailed budget plan for the upcoming fiscal year 2010. In this budget plan the administration will recommend a funding level for the U.S. Nuclear Regulatory Commission's (USNRC's) scientific and technical review of the Department of Energy's (DOE's) license application for a nuclear waste repository at Yucca Mountain, Nevada. Its budget plan will also specify a funding level for the DOE's activities to respond to the Requests for Additional Information from the USNRC.

The current national policy to develop a geologic repository at Yucca Mountain arises from a major act of Congress, the U.S. Nuclear Waste Policy Amendments Act (NWPA) in 1987. This law stopped a process that was evaluating multiple sites and restricted the DOE to study and develop a repository at Yucca Mountain. This 1987 law followed the original enactment of the Nuclear Waste Policy Act (NWPA) in 1982,

which had earlier prohibited the DOE from considering any east coast sites for the first national geologic repository, thus exempting the U.S. eastern seaboard from consideration for a repository in granite rock similar to the sites that have been studied in Sweden and have now been successfully selected in Finland.

While the process that selected Yucca Mountain is broadly viewed as being unfair, and is deeply unpopular in Nevada, no subsequent efforts to change this 1987 policy have proven to be successful. Specifically, legislation recommended by Nevada to have the federal government take title to spent fuel at reactor sites and store it there indefinitely was not enacted nor even debated in committee [2], nor was legislation by repository advocates recommending the removal of the current statutory cap on the quantity of spent fuel that may be sent to Yucca Mountain [3].

Because piecemeal efforts to change U.S. policy have proven unsuccessful, the principal political battles on U.S. nuclear waste policy have been waged within the U.S. Congress in establishing funding appropriations for the Yucca Mountain Project. In these battles only a modest fraction of the approximately \$750 million the federal government collects annually from utilities into the Nuclear Waste Fund (NWF) has ended up being appropriated to fund the Yucca Mountain project, and the remainder has been used to offset unrelated spending while remaining within annual federal deficit limits.

The Bush Administration, favoring nuclear energy and recognizing the scientific consensus for the need for a geologic repository, advocated for substantial funding of the Yucca Mountain Project. During this 8-year period a major effort occurred to improve the scientific understanding of the site and to develop modeling tools that could be used for licensing analysis. Ward Sproat, who was confirmed in 2006 as the most recent

director of the DOE Office of Civilian Waste Management, focused the majority of the Office's resources away from deployment technologies such as transportation, and onto the completion of a repository license application that could be submitted to the USNRC before the end of the final Bush term. The license application that the DOE submitted to the USNRC in June, 2008, shows a large margin for compliance with the million-year safety standard established by the Environmental Protection Agency (EPA), as shown in Fig. 1.

The Obama transition office established a clear commitment to "Restore Scientific Integrity to the White House," under which the transition office stated that the incoming administration would:

"Restore the basic principle that government decisions should be based on the best-available, scientifically-valid evidence and not on ideological predispositions." [1]

With its selection of its White House Science Advisor and its Secretary of Energy, the Obama administration has signaled a clear commitment to science and scientific integrity. But the administration's fiscal-year 2010 budget plan will provide a major litmus test for how strong the new administration's commitment to scientific integrity is, in a case where the administration faces very strong political pressure from within its own party to drastically reduce or eliminate the funding for the current USNRC review.

The United States has made large investments in climate modeling, even though until recently the results of these studies have not had substantive impact on U.S. policy

on carbon emissions. There is not a major philosophical difference between ignoring scientific evidence to serve ideological predispositions, versus actively suppressing scientific inquiry to serve ideological predispositions. But the second approach causes yet greater damage—the most recent Yucca Mountain appropriations decisions that the U.S. Congress has made did not simply reduce the U.S. capacity to evaluate the Yucca Mountain site, they have also almost completely dismantled the U.S. scientific capacity to study any kind of geologic repository.

U.S. nuclear waste policy has been reduced to a quagmire so dysfunctional that has systematically degraded and dismantled the national scientific and technical capacity to understand the geochemistry and geophysics that underpin geologic repository performance. Therefore it is vital that the United States systematically review its current approach to nuclear waste management, and completely and comprehensively overhaul its current failed nuclear waste policy.

The solution to U.S. nuclear waste policy does not lie in cutting off the funding of the USNRC review of the Yucca Mountain license application. A robust U.S. policy would allow this USNRC review to continue to completion because it will be technically sound and will provide vital information to inform policy. A robust policy would take the results of this review into account, inside a broader policy framework that would establish criteria for whether and how to use Yucca Mountain. A robust policy would sustain a substantial investment in general repository science. A robust policy would spread the burdens of nuclear waste management, and the benefits, more uniformly across the United States. A robust policy would minimize the burdens transferred to

future generations, particularly those burdens that would remain after the economically productive life of nuclear facilities has ended.

Ultimately, the only viable solution lies in a complete and comprehensive policy review, leading to a major amendment of the 1987 Act.

A new comprehensive amendment to the NAWPA must emerge from a systematic process. But in the end—to be successful—there are several logical elements a comprehensive amendment must likely include. First among these elements would be a congressional decision, after systematic review, to authorize the licensing and construction of a deep salt repository near the existing Waste Isolation Pilot Plant facility in southern New Mexico, with a new surface facility designed specifically to handle civilian waste materials (versus the defense transuranic wastes that the current WIPP facility now handles). The salt formation at WIPP has the major advantage of providing essentially perfect and permanent waste isolation for many important nuclear waste streams. But because the salt creeps to encapsulate the waste and weakens when heated, the disposal at WIPP is essentially irreversible (whereas Yucca Mountain is very different, providing strong albeit imperfect isolation but far easier long-term recovery). The use of this new deep salt facility would be strictly limited by statute to the disposal of materials that are known to have no potential future economic value and otherwise fit the technical capabilities of the geological formation.

The use of Yucca Mountain could then be restricted to those materials that are unlikely to be economic to recycle in the intermediate term, but are judged to have potential long-term economic value and thus warrant disposal in a facility for which retrievability is feasible for several centuries. This would represent a subset, likely a

very small subset, of nuclear materials currently stored or generated in the civil and defense sectors.

Finally, a combination of on-site and centralized interim storage would be used for all materials that might have potential economic value to recycle in the intermediate term (within the next century or so). This would include most or all spent fuel discharged by current light water reactors.

Some centralized interim storage should be authorized and constructed in the Eastern or Midwestern United States, to accept spent fuel from decommissioned nuclear power plants, and also to demonstrate a national willingness to distribute and accept the burdens of waste storage and management more equitably across the country. A logical candidate (in terms of current federally owned sites) might be the Savannah River Plant in South Carolina. Because the amended NWPA would also authorize the development of geologic repositories capable of taking this spent fuel if it is not recycled in the intermediate term, local communities would not have to worry about interim storage becoming de facto permanent storage.

With these policy changes, the rate and distance of spent fuel transportation would be minimized. Ongoing R&D could be performed to further improve spent fuel shipping technology, and the amendment could require full-scale testing of transportation canisters to further reassure the public and other stakeholders.

The amendments could also assure that affected communities receive benefits that balance burdens. For example, the statute could make permanent the New Mexico Sandia National Laboratory's current role as the lead U.S. laboratory for repository research and

development. Communities hosting centralized interim storage and repositories could also be given priority for hosting future fuel cycle demonstration facilities.

From the perspective of national security, a comprehensive amendment to the NWPA could broaden the types of foreign nuclear materials that the DOE could be authorized to import and manage, beyond the highly-enriched research reactor fuel that the U.S. now takes, to include limited quantities of foreign commercial spent fuel (limited to a small fraction of total U.S. domestic spent fuel production, so the quantitative burden would be small). The DOE could be authorized to enter into contracts to take foreign spent fuel, in cases where the U.S. State Department determines that it would improve U.S. national security. If accompanied by pressure on other major nuclear fuel exporting countries (e.g., France, Russia, China) to do the same, this could create a strong set of incentives on new countries that just are now moving forward to adopt nuclear energy to avoid developing sensitive enrichment and reprocessing capabilities, rather than adopting Iran and North Korea as their role models.

A big question for amending the NWPA is how and when to begin recycling spent fuel. Certainly the currently available technology for recycle into conventional light water reactors is unattractive on both economic and net benefit grounds. So a vital element of a comprehensive amendment would define a path forward to develop and deploy advanced fuel-cycle and Generation IV reactor technologies capable of economically and securely recycling spent fuel. In this regard, it is vital that the NWPA amendments assure that a portfolio of such advanced technologies will be explored and that these research and development programs are subjected to effective external scientific peer review. The simplest way to determine when these technologies are ready to perform recycle at

commercial scale is to avoid any subsidies for commercial deployment, so that recycle enters into the marketplace when it becomes economically attractive.

Besides being dysfunctional and costly, current U.S. nuclear waste policy is simply an embarrassment. Clearly any single element of a functional policy, as outlined above, would be impossible to implement by itself. But aggregated together into a comprehensive and far-reaching change from current U.S. policy, these elements create a logical path forward to manage nuclear wastes in a manner that fairly shares burdens and benefits across the United States.

References and notes

1. <http://www.aip.org/fyi/2008/115.html>
2. U.S. Senate Bill S. 2099, "The Spent Nuclear Fuel On-Site Storage Security Act of 2005," Dec. 14, 2005.
3. U.S. Senate Bill S. 3962, "Nuclear Fuel Management and Disposal Act," Sept. 27, 2006.

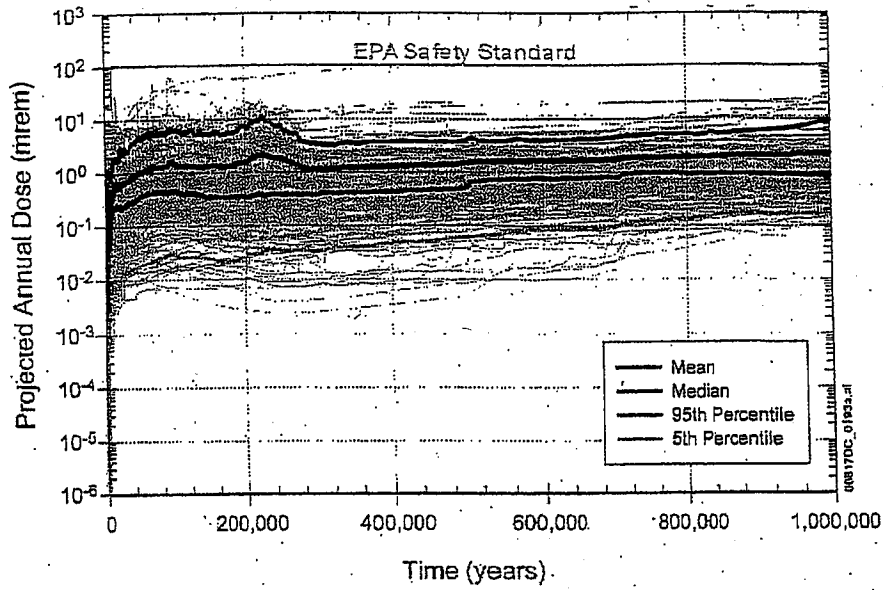


Figure 1. The DOE license application for Yucca Mountain, now under independent technical review by the USNRC, shows a large margin for compliance with the million-year EPA safety standard.

Nagler, Asaf

From: Nagler, Asaf
Sent: Monday, November 16, 2009 7:40 AM
To: Lyons, Peter
Subject: Re: Yucca Mtng

That is helpful, thank you pete.

Asaf Nagler
Staff Director and Senior Advisor
Office of the Under Secretary of Energy
202-586-1026 (office)
202-251-7824 (mobile)
Asaf.Nagler@hq.doe.gov

From: Lyons, Peter
To: Nagler, Asaf
Sent: Sun Nov 15 20:10:52 2009
Subject: Re: Yucca Mtng

Hi Asaf
Ideas might include:
Timing and implications of any announcement re the license application on the people and program,
Impact on Pete's confirmation and confirmation to do what?,
Need to protect nations technical investment in repository science-both knowledge and people,
Lessons learned from successful foreign programs.
Hope this helps
Pete

From: Nagler, Asaf
To: Lyons, Peter
Sent: Sun Nov 15 19:37:57 2009
Subject: Yucca Mtng

Pete,

I hope you had a good weekend. In preparation for the Yucca Meeting, do you have a list of items that you would like addressed/discussed? When you have a second, if you could send me your thoughts, that would be great so that I can put an agenda together.

Thanks a lot.

-Asaf

From: [REDACTED]@rw.doe.gov
To: ALL.OCRWM@rw.doe.gov
Subject: Further Guidance on the Retention of Documents
Date: Thursday, May 20, 2010 4:34:49 AM

All OCRWM personnel are instructed to continue to refrain from the destruction of any documents or copies of documents that relate to Yucca Mountain and any of the science relating to storage or disposal of high-level waste or spent nuclear fuel, even if permitted under applicable retention schedules. This instruction is to be carried through to all contractors performing services for OCRWM, including other agencies performing services under interagency agreements. During the recent hiatus of shutdown activities, we were already refraining from destruction of documents or copies of documents. This confirms that this restriction remains in effect. Accordingly, documents or copies of documents should not be shredded, recycled, or destroyed in any other manner. Documents or copies of documents should be placed in a box in your work area so that they can be periodically picked up and stored until this direction is rescinded. Should you have any questions, please contact your Office Director.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, May 11, 2010 5:21 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Yucca Mountain Withdrawal of Work

[REDACTED],
As we discussed, I think the turn-around time is unreasonable (i.e., a deliverable of this magnitude and importance in less than a week). I understand that Sandia may have done some preliminary work but I still don't think the timing is adequate. I will draft a letter to Sandia tomorrow and will coordinate with you and others as we determine appropriate.

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, May 11, 2010 4:31 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Yucca Mountain Withdrawal of Work

[REDACTED], attached is the letter from OCRWM requesting Sandia's shutdown plan and termination of task activities. They want this plan by 17 May. Sandia has indicated to me that it may take up to 3 weeks depending on what the letter states. Please provide the necessary direction to Sandia. If you have any questions please contact me. Thank you. [REDACTED]

-----Original Message-----

From: [REDACTED]@YMP.GOV [mailto:[REDACTED]@YMP.GOV]
Sent: Tuesday, May 11, 2010 4:04 PM
To: [REDACTED]
Cc: [REDACTED] sandia.gov; [REDACTED] (RW)
Subject: Yucca Mountain Withdrawal of Work

Here is my letter to Joann, expressing DOE's decision to withdraw all work related to licensing at Yucca Mountain. Please call or email me if you have any questions. I'm certain that we will have much to discuss over the next few months.

----- Forwarded by [REDACTED]/YD/RWDOE on 05/11/2010
02:59 PM -----

[REDACTED]
05/11/2010 01:32 PM

To: [REDACTED]/YD/RWDOE
cc:
Subject: LL Letter

LSN: Not Relevant - Not Privileged
User Filed as: Excl/AdminMgmt-14-4/QA:N/A

(See attached file: Ltr, [REDACTED], dtd 5-11-10.pdf)

[REDACTED]

From: [REDACTED]
 Sent: Tuesday, June 29, 2010 4:48 PM
 To: [REDACTED]
 Subject: FW: ASLAB Denies DOE petition to Withdraw LA
 Attachments: 20100629+63-001+-+NRC+Order+Denies+DOE+Petition+to+Withdraw[1].pdf

Do not know what impact this will have but I am more concerned us not allowing Sandia to properly archive information based on direction from OCRWM. [REDACTED]

From: [REDACTED] [mailto:[REDACTED]@sandia.gov]
 Sent: Tuesday, June 29, 2010 12:17 PM
 To: [REDACTED]
 Subject: FW: ASLAB Denies DOE petition to Withdraw LA

latest news on YMP We believe that DOE will appeal this decision to the Commission.

[REDACTED]

From: [REDACTED]
 Sent: Tuesday, June 29, 2010 11:23 AM
 To: [REDACTED]
 Subject: ASLAB Denies DOE petition to Withdraw LA

[REDACTED]

From: [REDACTED]
Sent: Thursday, July 01, 2010 12:11 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Yucca Mountain Closure

[REDACTED]
This is a follow up to our meeting this morning. [REDACTED] and I are proposing that we send OCWRM in response to their attached letter. Let me know if you need additional information. Thanks.
[REDACTED]

[REDACTED]
The purpose of this email is to obtain clarification on your June 22, 2010, letter; Subject: Direction to Withdraw Work Related to Office of Civilian Radioactive Waste Management (OCRWM) Licensing Proceedings Contract Tasks.

Your letter states Sandia needs to meet Licensing Support Network (LSN) obligations and preserve all existing records and materials. However, the letter also states, "We have determined that the suggested tasks are not required for DOE to comply with its obligations to preserve the LSN or other existing records and materials needed if the proceeding were to resume"... "Therefore, you are directed not to proceed with these suggested tasks but to limit your ongoing work to meeting LSN obligations and preserving all existing records and materials, including, most importantly, those that contain scientific information." Sandia has indicated that all tasks are necessary for proper preservation and they need until December 31 to accomplish the tasks. Please identify the specific suggested tasks that are not necessary in Sandia's May 28th Plan. The Sandia Site Office (SSO) wants to make sure that we understand OCWRM's direction to ensure the contractor adequately preserves records and materials, particularly in light of recent GAO interviews with Sandia personnel and an early expression of concern for record keeping, and the uncertainty associated with the final outcome of litigation (reference Atomic Safety and Licensing Board (ASLBP) No. 09-892-HLW-CAB04, Docket No. 63-001-HLW).

In addition, please let me know if Sandia's estimated completion dates (e.g., December for preservation of records) are acceptable. They have indicated no additional funds will be necessary but time beyond September 30 until December 31 (with final billing in the second quarter of FY11) is necessary to adequately complete close-out activities (reference Sandia's proposed project plan). Their request appears to be reasonable especially due to, but not solely because of, the delay in providing direction to stop activities. In addition, there are other shut down activities such as the hot cell at PNNL that cannot be accelerated as well and will not be completed until the end of the calendar year.

It is my understanding that Sandia is currently implementing their May 28 Plan and SSO is recommending they be allowed to fully implement their plan, as submitted.

Finally, I received your letter via "hard" mail on June 28, which was after your proposed effective dates. Therefore, my letter to Sandia will indicate "effective immediately." Upon receipt of your clarification, SSO will notify Sandia on path forward. Thank you.



[REDACTED] Ltr to
[REDACTED] Re Ktr Dir.

[REDACTED]
Contracting Officer

Sandia Site Office
National Nuclear Security Administration
Telephone: [REDACTED]
Fax: [REDACTED]
email: [REDACTED]@doe.gov

Table of Contents – 3/2/2010

1. *March 2, 2010*

- a. Meeting agenda for 3/2/2010
- b. Meeting memo for 3/2/2010 – background information
- c. Previous meeting notes from 2/23/2010
- d. Meeting handouts
 - i. **OCRWM FY 2010 Closeout (Revision 0 ICN 0)**
 - ii. **Crosswalk of OCRWM Functions Transitioning to NE in FY 2011**



S3 Weekly RW Meeting

7A-219

Wednesday 4/7/2010, 11:00-11:30AM

Briefing memo by Ben Steinberg

Background

Actions completed

- RW gave a briefing to S2 and S1 staff on Closeout activities today (4/6)
- Recommendation memo to S1 from RW/S3 asking to move forward on personnel issues was written and delivered to S3 and is now going through concurrence process
- The Closeout plans have been revised. A status column has been placed in the document to track RW tasks from each of the six focus areas was created. The new plan is included in your briefing materials.
- PA will take over with RW website

Important points

Actions pending

- RW is waiting to hear if they should continue to work on personnel issues, or whether there needs to be a total stoppage in work until after S1 meets with members of Congress.
- Critical personnel issues that still need to happen include: 1) Plan for Buyout/Earlyout; 2) GC transfer memo for RW employees; 3) NE Job postings for RW employees; and 4) Details of EE term positions for RW employees
- Resolution still needs to be made on who will take over control and payment of RW Nevada property. NNSA looks to be the most likely candidate
- S1 letter to members of Congress to be made available to Labor Unions. Waiting for Asaf's feedback
- LM was going to develop a budget for RW electronic records management. I have follow up with Dave Geiser and Karl Stoeckle about this and have not heard back from them about this

Next Steps

- Discussion on how to move forward with personnel issues: 1) Plan for Buyout/Earlyout; 2) GC transfer memo for RW employees; 3) NE Job postings for RW employees; and 4) Details of EE term positions for RW employees
- Discussion on how to move forward with property issues
- Discussion of LM budget needs to handle RW electronic files in FY10 and FY11

ATTACHMENTS

Attachment – Decision memo to S1 on how to move forward on personnel issues

Attachment – Detailed Closeout Plan (with status column)

Attachment – Agenda for tomorrow's meeting



S3 Weekly RW Meeting

7A-219

Wednesday 4/14/2010, 1:45-2:00PM

Meeting requested by Under Secretary Johnson

Briefing prepared by Ben Steinberg, S3 Office, 202-253-0859

This week the most pressing issues are:

1. *DOE's meeting with Congressional Staff:* On Tuesday (4/13) Scott Harris, Steve Isakowitz, Dave Zabransky, and Dan Utech went to Capitol Hill to meet with Congressman Frelinghuysen's staff to talk about the legal authority DOE has in shutting down Yucca Mountain. There were a number of action items that came out of this meeting that Dave can talk about.
2. *Legal proceedings update:* DOE has multiple cases pending against it in regards to Yucca Mountain. Specifically, there are cases in the District Courts, as well as a filing at the Nuclear Regulatory Commission.
3. *Status of meeting between Secretary Chu and Congressman Frelinghuysen:* A meeting has still not been scheduled.

Additional issues:

4. *Most critical personnel issues that still need to happen:* Plan for Buyout/Earlyout; GC transfer memo for RW employees; NE Job postings for RW employees; and Details of EE term positions for RW employees. None of these actions have been worked since our last meeting.
5. *Property:* A resolution on who will take over total control and payment of RW property is still needed (NNSA or EM)?

Invited Attendees:

Nagler, Asaf; Zabransky, Dave; Lev, Sean; Mueller, Stephanie; Geiser, David; Sandoli, Robert; Miller, Warren; Hanson, Christopher; Lange, Robert; Isakowitz, Steve; Miller, Neile; Utech, Dan; Leistikow, Dan; Hurlbut, Brandon; Anderson, Margot; Harris, Jessie; Cadieux, Gena; Podmaniczky, Katinka

TO DO LIST:

	Due date	POC/Office
Direction on whether we can continue to meet	4/15	Sean Lev/GC
Identify skills needed to retain knowledge base from RW	5/5	RW and NE
Complete records management plan	5/5	RW and LM
Plan detailing how much it would cost to reconstitute RW office and restart license application process should they be terminated	5/5	Steve Isakowitz/CF O
Memo to HEWD providing language for repealing the department ability to reorganize without permission.	5/5	Scott Harris/GC



S3 Weekly RW Meeting

7A-219

Wednesday 4/14/2010, 1:45-2:00PM

Meeting requested by Under Secretary Johnson

Briefing prepared by Ben Steinberg, S3 Office, 202-253-0859 *contaminated.*

5 NE close down

25

36 continuity

144

S3 BRIEFING

61

~~140~~ 100 }
~~140~~ 140 } *contaminated*
~~140~~ 400 } *Feb*

This week the most pressing issues are:

1. *DOE's meeting with Congressional Staff:* On Tuesday (4/13) Scott Harris, Steve Isakowitz, Dave Zabransky, and Dan Utech went to Capitol Hill to meet with Congressman Frelinghuysen's staff to talk about the legal authority DOE has in shutting down Yucca Mountain. There were a number of action items that came out of this meeting that Dave can talk about.
2. *Legal proceedings update:* DOE has multiple cases pending against it in regards to Yucca Mountain. Specifically, there are cases in the District Courts, as well as a filing at the Nuclear Regulatory Commission.
3. *Status of meeting between Secretary Chu and Congressman Frelinghuysen:* A meeting has still not been scheduled.

Additional issues:

4. *Most critical personnel issues that still need to happen:* Plan for Buyout/Earlyout; GC transfer memo for RW employees; NE Job postings for RW employees; and Details of EE term positions for RW employees. None of these actions have been worked since our last meeting.]
5. *Property:* A resolution on who will take over total control and payment of RW property is still needed (NNSA or EM)?] *NNSA*

Invited Attendees:

Nagler, Asaf; Zabransky, Dave; Lev, Sean; Mueller, Stephanie; Geiser, David; Sandoli, Robert; Miller, Warren; Hanson, Christopher; Lange, Robert; Isakowitz, Steve; Miller, Neile; Utech, Dan; Leistikow, Dan; Hurlbut, Brandon; Anderson, Margot; Harris, Jessie; Cadieux, Gena; Podmaniczky, Katinka

1. *STD work order for Contaminated.*
2. *DOE Plan for Buyout/Early out*
3. *36 employees + 25 employees.*
4. *Property Dispat*
5. *Transfer was no - 540*

TO DO LIST:

	Due date	POC/Office
Direction on whether we can continue to meet	4/15	Sean Lev/GC
Identify skills needed to retain knowledge base from RW	5/5	RW and NE
Complete records management plan	5/5	RW and LM
Plan detailing how much it would cost to reconstitute RW office and restart license application process should they be terminated.	5/5	Steve Isakowitz/CF O
Memo to HEWD providing language for repealing the department ability to reorganize without permission.	5/5	Scott Harris/GC

COSTS BEYOND 2010

ACTIVITY	2010	2011	2012 AND BEYOND	Suggest
ONGOING SITE MAINTENANCE	IN RW BUDGET	\$350,000	\$350,000/YEAR UNTIL PERMANENT CLOSURE	NNSA
RETENTION OF PHYSICAL SPECIMENS	IN RW BUDGET	\$200,000	\$200,000/YEAR AS LONG RETAINED	NE
LSN MANAGEMENT	IN RW BUDGET	\$1,700,000	\$1,700,000/YEAR AS LONG AS REQUIRED	LM
RETENTION AND MANAGEMENT OF RECORDS	IN RW BUDGET	\$5,800,000 (EST. FROM LM TRANSITION PLAN)	AS DETERMINED BY LM AND INCLUDED IN LM BUDGET REQUEST	LM
USARS PENSION FUNDING	\$7,500,000 FROM RW			LM
USARS AND SANDIA CONTRACT CLOSEOUT	IN RW BUDGET	\$500,000	\$500,000	NE
NE TERM EMPLOYEES TO HANDLE RW CLOSEOUT ACTIVITIES (2 YEAR TERM)	FUNDED BY RW			NE
NUCLEAR WASTE FEE VERIFICATION, ADEQUACY DETERMINATION, FUND MANAGEMENT, INDEPENDENT AUDIT	IN RW BUDGET	\$2,300,000	\$2,300,000	GC
OFFICE SPACE AT NEVADA SITE OFFICE FOR NE AND GC STAFF	IN RW BUDGET	APPROX. \$10,000/PERSON/YEAR	APPROX. \$10,000/PERSON/YEAR (COST BEING FINALIZED WITH NSO)	NE and GC
OFFICE SPACE AT NEVADA SITE OFFICE FOR NRC INSPECTORS	IN RW BUDGET	APPROX. \$30,000/YEAR AS LONG AS REQUIRED	APPROX. \$30,000/YEAR AS LONG AS REQUIRED (COST BEING FINALIZED WITH NSO)	NE
SITE REMEDIATION AFTER PERMANENT CLOSURE (TIMING OF EXPENDITURES UNKNOWN AT THIS TIME)			\$85-97 MILLION, RANGE OF RW & CFO ESTIMATES. ACTUAL COST AND SCHEDULE SUBJECT TO NEGOTIATIONS WITH STATE, COUNTY AND AFFECTED AGENCIES.	NNSA

RW STATUS

AS OF 5/28/10

FACILITIES

- RW has turned back to the landlord 10 of the 15 buildings that comprise the Yucca Mountain Project campus in Summerlin. Sandia occupies 2 buildings, USARS is in one building, and 2 buildings contain records and surplus equipment. As the leases on the 5 remaining buildings have expired, we are paying monthly rent on these facilities (approx. \$250k/month). The rent will increase by 25% beginning September 1. We are planning to be out of these buildings by September 30.
- The RW Hillshire Building will be turned over to LM in July; RW has paid the lease on this building through FY2011.
- RW staff is working with HC & MA staff to consolidate RW staff in the 7F corridor. MA has requested the excess space for use by other organizations. Union approval will be required.

CONTRACTS

- The M&O submitted their plan for shutdown of licensing related activities. After review, DOE will be sending further guidance eliminating tasks that DOE believes are not necessary to comply with DOE's ongoing LSN obligations, to preserve existing records and materials needed if the proceeding was to resume, or otherwise to preserve the scientific information developed during the many years of the Yucca Mountain project. Currently being developed with GC.
- The shutdown plan submitted by USGS is under review.
- The shutdown plan from Sandia National Laboratories is scheduled to be received 5/28.

STAFFING

- Applications for early-out/buy-out are being accepted through June 16. About 22 employees have expressed interest to date. Most employees will depart by 7/31; key staff will be held to 9/30.
- The NE jobs have been posted and closed on June 26. Interviews will take place next week. Selected employees will transfer from RW to NE on September 26.
- The MA/EERE term positions have been posted and have closed. Interviews will take place shortly. Selected employees will transfer from RW to MA/EERE on September 26.
- The GC positions have been posted and close on June 8. The transfer of functions from RW to GC is approved and pending.
- Ken Powers will be transferring to NNSA HQ on July 31. Ken will continue to support RW closeout.

FUTURE COSTS

Following table provides cost estimates for activities that will continue beyond FY2010. Estimates are preliminary in nature, but can be used for budgeting purposes. No closure has been reached with NNSA staff in Nevada regarding turnover of site to NNSA.

Discussion Paper
USA RS Contract Close-out for Selected Tasks

Purpose: Obtain Under Secretary approval to implement proposed approach

Approach:

- Reduce the scope of the contract to include only:
 - Shutdown of finance, human resources (HR), subcontracts, and information technology (IT)
 - Pension plan and medical benefit plans (consistent with Office of Legacy management transition plan)
- Work would be performed at URS corporate offices
- Requires 11.5 FTE and \$2.1M for labor, other direct costs, and fee from October 2010 through December 2011.
 - Includes the 5 FTEs required to administer the pension plan and medical benefits.
 - Provides for 6.5 FTE to shutdown finance, HR, subcontracts, and IT
- Advantages:
 - Provides the capability to closeout approximately 225 subcontracts rather than transferring to another M&O contractor
 - Safeguards PII by continuing to maintain a separate URS computer system until closeout is completed
 - Facilitates the separation of USA RS employees by having the HR representatives available to process out employees
 - Provides for continuity of financial systems
- Next Steps
 - Obtain Under Secretary approval
 - Finalize approach with HQ procurement
 - Modify contract to implement approach

Weekly RW Transition meeting:

3/2/2010

Attendees: Under Secretary Johnson, Asaf Nagler, Dave Zabransky, David Geiser, and Sean Lev

Agenda:

I. Run-through of RW Transition Plan: 15 minutes

- Format and highlights
- Concerns/comments/questions

II. Update on human capital/budget: 7 minutes

- NE responsibilities
- EM responsibilities
- EE potential

III. Update on Records 5 minutes

- LM on e-files
- Physical files

LEAD ON THIS
 DAVE & Ken Powers
 → GO to LRS veyms
 NEXT week.
 Records & I.T.
 Transition Plan

IV. Update on contracts and inquiries 3 minutes

- Contracts – buildings, M&O, licensing
- IG audit
- GAO audits

In Process

- UNION Neg.
- Records/I.T.

NEXT STEPS

- 1). TASKS → MEMO -- CALENDARS
- 2). Priority M&O STEPS
- 3). CALENDAR -- BIB STEPS
- 4). Chge MGT. --
- 5). NOTIFY when Chge MGT. Plan to issue.



MEETING MEMO *for the* UNDER SECRETARY OF ENERGY
Weekly Meeting with RW

DATE: 3/1/2010
FROM: Ben Steinberg

Purpose

This weekly meeting is set for S3 to review progress and concerns from the Office of Civilian Radioactive Waste Management (RW) as they move to close down operations.

Attendees

Dr. Johnson, Asaf Nagler, Dave Zabransky (RW), David Geiser (LM), and Sean Lev (NE)

Background

5 themes have emerged during the past two meetings with RW. These themes will most likely be discussed in all meetings moving forward.

1. *RW Closeout plan:*

- **The plan was emailed to S3 on Friday, 2/26.** The plan will need to be reviewed by our office and commented on in the near term future. This will be a major topic of discussion in this week's meeting.

2. *Human Capital:*

- GC has agreed to take on 15 staff from RW (long-term).
- RW and EE still discussing whether EE will take on (12-30) RW staff. **This decision will be made by March 19.**
- NE was tasked with putting together a plan and finding out how much money they have to take on RW personnel. A **"Crosswalk" of RW functions transitioning to NE in FY 2011 was sent to our office on Friday 2/26.** This will need to be reviewed and commented on in the meeting.
- **LM stated that they have no money allocated in their budget for RW staff.** NE may have to transfer funds to them to manage the electronic files.

3. *Records:*

- **Physical samples:** It was agreed in last weeks meeting that **no physical samples will be destroyed** for legal reasons. However, the questions still remain: who is the custodian of these samples and where are they going?
- **Electronic files:** Ken Powers (RW) and John Montgomery (LM) are currently discussing what will happen to the RW files, how much money it will take each year to maintain them, and who will be responsible for this? **LM will make a decision about whether they can take on this task next week.**

4. *Contracts:*

- Depending on the contract, they will have to be terminated at different times. For instance, anything having to do with the licensing of Yucca Mountain will have to wait. **Building and M&O contracts will be terminated by April 30th.**

RW Transition Weekly Meeting Notes
2/23/2010

Attendees:

-Under Secretary Johnson, Asaf Nagler, Dave Zabransky, Sean Lev, David Geiser

RW Transition Plan:

-Plan was promised to Dr. Johnson by 3/1. They sent the plan to us on Friday, 2/26.

Human Capital:

- 15 people are being transferred from RW to GC. Dr. Johnson asked if this is a term position or career. Dave remarked that this is a long-term position.
- Recommendations to move employees from RW to other divisions is going to S2 at the end of the week (3/5).
- Many of RW's staff will get transferred to other divisions within the department. Dave wants to make sure that some people are detailed back to RW until the closure. Skeleton offices will need to be created for these people.
- RW and EE are having preliminary conversations about a satellite office to handle grants/contracts for them. This office could be upwards of 30 people. Scott Hines, Steve Chalk, and Claire Johnson are the people in EE that RW is talking to. By March 19th they will reach an agreement on whether EE will take on new staff.
- NE stated that they have program dollars that pays for some staff to transition to other offices. A number of \$45 million was stated at the meeting. Dr. Johnson asked for them to put together a budget for the transition of staff and how they would be paid. The questions are: where is the money coming from, and do we have enough?

Records (physical/electronic):

- July 30th all employees need to be out of the buildings in order to clear out the facilities.
- Ken Powers (RW) and John Montgomery (LM) will be the two leads on handling electronic records for now.
- LM may manage RW electronic files after the office closure. Dr. Johnson asked them to make the decision in two weeks.
- NE is helping to decide what to do with physical samples. Do we keep them in the warehouse, transfer them to another location or destroy them? There was consensus that we will hold on to them in case there is litigation in the future. The question is: who is the custodian of these files and where are they going? Maybe to NNSA?

Contracts:

- Asaf asked where are we with contracts? Can we start to terminate them? Dave said that certain contracts can be terminated (those not related to the licensing operations).
- Building contracts and M&O contracts will be terminated by April 30th.

Inquiries:

- RW received a letter from the Inspector General (IG) to do an audit of Yucca Mountain closure. Dave Zabransky is going to ask the IG if they can continue this audit process later in March – after they have completed a transition plan.

RW Transition Weekly Meeting Notes

2/23/2010

Attendees:

-Under Secretary Johnson, Asaf Nagler, Dave Zabransky, Sean Lev, David Geiser.

RW Transition Plan:

-Plan was promised to Dr. Johnson by 3/1. They sent the plan to us on Friday, 2/26.

Human Capital:

- 15 people are being transferred from RW to GC. Dr. Johnson asked if this is a term position or career. Dave remarked that this is a long-term position.
- Recommendations to move employees from RW to other divisions is going to S2 at the end of the week (3/5).
- Many of RW's staff will get transferred to other divisions within the department. Dave wants to make sure that some people are detailed back to RW until the closure. Skeleton offices will need to be created for these people.
- RW and EE are having preliminary conversations about a satellite office to handle grants/contracts for them. This office could be upwards of 30 people. Scott Hines, Steve Chalk, and Claire Johnson are the people in EE that RW is talking to. By March 19th they will reach an agreement on whether EE will take on new staff.
- NE stated that they have program dollars that pays for some staff to transition to other offices. A number of \$45 million was stated at the meeting. Dr. Johnson asked for them to put together a budget for the transition of staff and how they would be paid. The questions are: where is the money coming from, and do we have enough?

Records (physical/electronic):

- July 30th all employees need to be out of the buildings in order to clear out the facilities.
- Ken Powers (RW) and John Montgomery (LM) will be the two leads on handling electronic records for now.
- LM may manage RW electronic files after the office closure. Dr. Johnson asked them to make the decision in two weeks.
- NE is helping to decide what to do with physical samples. Do we keep them in the warehouse, transfer them to another location or destroy them? There was consensus that we will hold on to them in case there is litigation in the future. The question is: who is the custodian of these files and where are they going? Maybe to NNSA?

Contracts:

- Asaf asked where are we with contracts? Can we start to terminate them? Dave said that certain contracts can be terminated (those not related to the licensing operations).
- Building contracts and M&O contracts will be terminated by April 30th.

Inquiries:

- RW received a letter from the Inspector General (IG) to do an audit of Yucca Mountain closure. Dave Zabransky is going to ask the IG if they can continue this audit process later in March – after they have completed a transition plan.

RW Meeting:

7A-219

Tuesday, May 17th, 11:30AM-12:00PM

Meeting requested by Kristina Johnson

Briefing prepared by Ben Steinberg, 202-253-0859

Background:

Below are the action items that were discussed in the RW meeting two weeks ago (May 5th). A few important points:

Action # 3: All letters were sent to Sandia, USGS, and M&O. They were given till May 24th to provide us with a plan of action for closing down, and till May 31st to stop work.

Action # 5: HC, RW and others signed an agreement with the labor unions last week. They laid out the rules, processes and actions that will take place moving forward. I am trying to get a copy of this.

Action # 6: There is still no resolution on whether NNSA will take responsibility for the RW property. This action item was given to you in the last RW meeting.

Action # 7: The records management planning started up again last week and it will be important to get an update from Dave Geiser on when a draft of this plan will be complete.

Action # 8: RW stated that when they posted jobs for NE positions, this in effect was an articulation of the skill needed moving forward. They would like NE to articulate what they need as well.

Action Item	Point Person (Office)	Due Date	Status
1. Memo to the Secretary updating him on recommended RW next steps	Dave Zabransky (RW) and Asaf Nagler (S3)	5/5	Complete
2. Conversation with WH and Congress about RW	Rod O'Connor (COS) and Brandon Hurlbut (DCOS)	5/6	Complete
3. Send stop work order letter to Sandia, USGS, and USRS.	Dave Zabransky (RW) and Sean Lev (GC)	5/10	Complete
4. Post job listings for GC, NE, and term positions for EE as well as Early Out/Buy Out options for RW employees.	Dave Zabransky (RW) and Sean Lev (GC)	5/10	GC jobs have not been posted. NE jobs need to be reposted (mistakes were found). EE jobs are posted.
5. Communicate stance with Unions	Mike Kane (HC) and Dave Zabransky (RW)	5/10	Complete
6. Update on whether RW property ownership will be NNSA or EM	Kristina Johnson (S3)	5/15	Pending
7. Complete records management plan	Dave Geiser (LM)	5/15	Pending
8. Identify skills needed to retain knowledge base from RW	Dave Zabransky (RW)	5/21	RW believes this is now an NE issue. Discussed below.

RW Meeting:

7A-219

Thursday, June 3rd, 10:30AM-11:00AM

Meeting requested by Kristina Johnson

Briefing prepared by Ben Steinberg, 202-253-0859

Overview:

This meeting will hopefully focus in two areas

- 1) Discussion on out year budget issues – who owns what/how much will it cost (15 mins)
- 2) Updates: job postings, NRC, records management plan, RW property, etc. (15 mins)

Background:

Below are the action items that were discussed in the RW meeting two weeks ago (May 18th). *Copies will be made of the below chart for the meeting.*

Action Item	Point Person (Office)	Due Date	Status
1. Follow up about GC job postings for RW related positions	Sean Lev (GC)	5/21	Completed
2. Review DOE's responses to the NRC (Construction Authorization Board's (CAB)) questions about the records management plan.	John Montgomery (LM) and comments from RW, GC, NE, CFO, S3 and others	5/20	Completed
3. Send responses to NRC (CAB) about the records management plan	John Montgomery (LM)	5/24	Completed
4. Review final draft of records management plan	John Montgomery (LM) and comments from RW, GC, NE, CFO, S3 and others	5/24	Completed
5. Approve and sign off on records management plan	RW, LM, NE, and GC	5/28	Pending (about to be completed)
6. Create a preliminary budget of all the items that will be carried over from RW into different program offices in the FY 2011 and FY 2012 budget.	Dave Zabransky (RW) / Rob Sandoli (S3) / Chris Hanson (CFO)	5/28	Completed

Agenda for this coming week: (This agenda is attached and copies will be made for the meeting)

1. Update on stop work letters, 5 minutes, Dave Zabransky (RW)
2. Update on Records Management Plan, 2 minutes Dave Geiser (LM)
3. Discussion on out year RW budget, 15 minutes, Kristina Johnson/Rob Sandoli (S3)/Dave Zabransky (RW)
4. Update on who will preside over the RW property, 2 minutes, Dave Zabransky (RW)
5. Update on NRC and other legal matters, 2 minutes, Dave Zabransky (RW)
6. Update on Nye County Commissioners, 2 minutes, Dave Zabransky (RW)
7. Update on GAO/IG Audit, NE/Dave Zabransky (RW)

4. *NRC*: We have sent NRC a letter of our intent to withdraw our license application. Sean Lev and others from DC are in Nevada doing oral arguments in front of the NRC this week on this matter. I wanted Dave or anyone else to give a quick update on where things stand on the legal front. We will have more on this next week.

5. *Nye County*: The County in which Yucca Mt. presides is Nye County. The Nye County Commissioners are coming to town next week and want to meet with you. Dave Zabransky will try and deflect this from happening. We pay the State of Nevada about \$27M/year now for RW related issues. Dave thought that Nye County may see about \$10M of that money.

6. *GAO Audit*: I got a call from John Gross in NE today about the GAO audit on our withdrawal of the license application. GAO is looking at NE as the program office that will handle left over activities for RW. John talked to Pete Miller about this and he is unhappy. Asaf asked for everything to be sent to him in writing and he will work with him on a plan of action with GAO. Someone from NE will briefly give an update on this.

7. *RW-1*: The Pete Miller confirmation as RW-1 has still not happened. I am not sure what this means for RW. However, it is important that he come to these meetings from now on. A significant amount of work that will be left over from RW will most likely fall into NEs hands and they have to start to come to grips with this.

Next steps:

- Discuss actions that need to be take on the GAO and IG audits
- Make sure Tom D'Agostino talks with his staff about NNSA taking over the RW property
- Send response letters to contractors about work stoppage
- Keep working on out year budget – who owns what and how much money do they need to put in?

Attachments:

1. RW Agenda – 6-3-10
2. Dave Zabransky's draft RW out year budget (FY11, FY12 and beyond). **NOTE: Your budget will have program offices next to it. No one else will have names attached to the budget amounts.**
3. Dave's status update from 5-28, including facilities update, contracts, and staffing.

RW Meeting:

7A-219

Tuesday, June 15th, 10:15AM-11:00AM

Meeting requested by Kristina Johnson

Briefing prepared by Ben Steinberg, 202-253-0859

Overview:

This meeting will focus on three areas:

- 1) Discussion on out year budget issues – who owns what and how much will it cost
- 2) Discussion of who will preside over the RW property
- 3) Updates: job postings, etc.

Background:

Below are the action items that were discussed in the RW meeting two weeks ago (June 3rd). Copies will be made of the below chart for the meeting.

Action Item	Point Person (Office)	Due Date	Status
1. Distribute USARS stop work and worker adjustment and retraining notification (WARN) to staff in PA, S1 and S2 for review.	Asaf Nagler (S3)	6/3	Completed
2. Draft carry over balance of RW transition costs that will exist after FY2010 (reflecting the discussion had at the 6/3 RW meeting, specifically focusing on 2012)	Ben Steinberg/Rob Sandoli (S3)	6/4	Completed
3. Send USARS stop work and WARN letter	Dave Zabransky (RW)	6/4	Completed
4. Comment on draft carry over balance of RW transition costs that will exist after FY2010	All	6/9	Completed
5. Develop formal memorandum from S2/S3 to NNSA explaining their obligation to take ownership of the Yucca Mountain Site	Dave Geiser (LM)/ Asaf Nagler (S3)	6/9	Completed
6. Work with contractors and staff to formulate exact carry over balance for RW in FY12 and beyond	Dave Zabransky (RW)/ Rob Sandoli (S3)	6/20	Pending
7. Send Reduction In Force notices for employees	Dave Zabransky (RW) with HC	7/4	Pending

Agenda for this coming week: (This agenda is attached and copies will be made for the meeting)

1. Discussion on out year RW cost estimates Update on Records Management Plan – Johnson, Sandoli (S3)/Zabransky (RW), 20 minutes
2. Discussion/update on who will preside over the RW property (Yucca Mountain site) – Zabransky (RW), 10 minutes
3. Updates on: a) Stop Work letters (USARS, USGS, and Sandia) b) Job postings for NE, GC, and EE c) Reduction in Force Notice – Zabransky (GC), 5 minutes
4. Update on GAO and IG Audit – Zabransky (RW), 5 minutes
5. Update on NRC and other legal matters – Lev (GC)/Zabransky (RW), 5 minutes

Discussion Points:

Discussion topics:

1. Out year budget issues:

Attached you will find the a "budget" of RW out year cost estimates for FY2011, 2012, and beyond that Rob and I put together with input from GC, LM, and RW. These numbers are estimates of what is needed moving forward. More vetting and accuracy will be needed before submission to the CFO and eventually OMB. There is still some confusion as to how NE is going to spend/share the money allotted to them in FY2011, as well as how GC is going to pay for the attorney services in FY2011 and beyond.

I have allotted the first 20 minutes of the meeting so we can review these numbers and make sure that everyone is on the same page.

2. RW Property:

Dave Zabransky has called the issue of RW property the "800 lb gorilla in the room." He met with Steve Mellington, RW site manager (and employee of NNSA) last week and there is still no clear indication from Tom D'Agostino that NNSA will take ownership of the site. NNSA is worried that if they agree to own and care for the site then they will get stuck with site cleanup costs down the line.

Last week, Dave Geiser worked with Dave Zabransky and Asaf to write a memo from S2 to you and D'Agostino stating who would "own" specific RW out year responsibilities moving forward. In this memo it states that NNSA will take over site ownership and EM will take over clean up responsibilities. I have attached this memo. For now, I have removed the heading that shows that the memo is from S2.

Updates:

1. Personnel: Provided by Dave Zabransky

- NE has offered permanent positions to 21 RW employees. 5 positions will be located in DC and 16 in Las Vegas.
- NE will be posting several temporary positions to support RW closeout activity. These positions (3) can be located in DC or Las Vegas.
- EERE and MA are in Las Vegas interviewing staff for temporary jobs; interviews in DC will take place next week. Job offers will be conditional until funding is secured.
- GC is conducting interviews this week to fill vacancy in the positions transferred from RW to GC. Eleven positions are available.
- HQ HC is preparing Reduction in Force notice for RW employees. It is currently planned to issue these letters on July 6 to RW staff that have not found other positions as of that date.
- RW continues to process early-out and buy-out requests.
- Staffing information will be provided separately later today

2. Contracting: Provided by Dave Zabransky

- Revised guidance letter has been issued to USARS; they have provided WARN notice to their employees as well as the State of Nevada and the City of Las Vegas.
- Revised guidance letters will be issued to Sandia National Laboratories and the USGS later this week.

- RW received the USARS Business Case for Pension, Retiree Medical, and Workers' Comp Programs on 6/9/10. This has been shared with GC, MA and LM. Discussions are underway to determine the appropriate actions.
3. GAO and IG Audits: *Provided by Dave Zabransky*
- RW Management met with George Collard and Rick Hass of the IG's office to discuss RW shutdown activities. This was done at the direction of Greg Friedman. No further interactions are planned at this time.
 - The response to GAO letter to the Secretary seeking information on the Yucca Mountain termination is in concurrence. The response is to be signed by RW.
 - RW Management and GC will meet with GAO investigators on Tuesday. To discuss RW and Yucca Mountain. The GAO staff is in Las Vegas, and will be meeting with USARS, Sandia, USGS and state and county officials later in the week.
4. NRC and other legal matters:
- Two weeks ago GC provided oral arguments to the NRC Board about removing the Yucca Mountain licensing request. They will hear from the Board by the end of the month.
 - GC is working with the State of Nevada on the terms for preserving the documents (34,000,000) and physical samples (the rocks) from RW related work.

Next steps:

- Discuss actions that need to be take on the GAO and IG audits
- Make sure Tom D'Agostino talks with his staff about NNSA taking over the RW property
- Send response letters to contractors about work stoppage
- Keep working on out year budget – who owns what and how much money do they need to put in?

Attachments:

1. RW Agenda – 6-15-10
2. Memo - RW scope of work post-2010
3. Attachment to RW scope of work post-2010: RW out year cost estimates
4. Departure update on RW employees – 6/7 and 6/14

Note: Additional materials will be included in your RW binder including WARN letters, Stop Work letters, Pension and Health Welfare Transition letters, etc.

RW Notes: 6/15

Modify budget:

1. KJ – wants 2010 costs from RW
2. USARS contract closeout at Sandia – what is this number (500,000)?
3. Program direction dollars split out from FTEs on R&D and other management - expertise
4. Existing liabilities – pays for GC – have that marked
5. LM needs to get funding from RW to start transferring funding - numbers maybe shift
6. Column – carry over column
7. Hear are the resources and here are the costs – carry over is a moving target
8. Add two FTEs to LM (FY10) – increase FTE ceiling from 57 to 59 – one from RW for records
9. PD – add \$3M – for attorney services – 2011 – and will continue
10. Resolve cleanup cost issues – put in tracker – get memo
11. Overall number needed for costs
12. Invite NNSA to RW meetings – Jay Cavanaugh
13. Read the memo and comment

- RIF notices - Coordination with Congressional staff – coordinating with them – by July

7th – if it's less than 50 people /

- Very close to 50 – RIF notice

- USGS and Sandia – letters – feedback –

- Comments on the memo

RW Meeting:

7A-219

Monday, June 28th, 11:30AM-12:00PM

Meeting requested by Kristina Johnson

Briefing prepared by Ben Steinberg, 202-253-0859

Overview:

This meeting will focus on three areas:

- 1) Discussion on out year cost issues – how much it will cost to cover RW work post-2010 and who will cover these costs
- 2) Discussion of who will preside over the RW property and other RW post-2010 activities
- 3) Updates: stop work letters with contractors, audits, and reduction in force notices, etc.

Background:

Action Item	Point Person (Office)	Due Date	Status
1. Add NNSA and EM personnel to the RW meeting distribution list	Ben Steinberg (S3)	6/15	Completed
2. Provide comments on USARS and Sandia stop work letters	Brandon Hurlbut (DCOS)/Stephanie Mueller (PA)/ Jonathan Levy (CI)	6/15	Completed
3. Collect comments on "RW scope of work post-2010" memo (<i>Attached</i>).	Asaf Nagler (S3)	6/17	Completed
4. Modify budget table and redistribute to the group for comment	Rob Sandoli (S3)/ Dave Zabransky (RW)	6/17	Completed (and ongoing)
5. Create funding stream from RW to LM for two FTEs to work on preservation of RW documents.	Dave Geiser (LM)/Dave Zabransky (RW)/ Chris Hanson (CFO)	7/1	Pending
6. Send out Reduction In Force notices, after internal coordination with Congress has taken place	Dave Zabransky (RW) with HC/ Asaf Nagler (S3)	7/7	Pending

Agenda for this coming week: (This agenda is attached and copies will be made for the meeting)

1. Discussion on out year RW cost estimates, Rob Sandoli (S3)/ Dave Zabransky (RW)/ Chris Hanson (CFO) - 15 mins
2. Discussion about "RW scope of work" post-2010 memo, Dave Zabransky (RW) - 10 mins
3. Updates on:
 - a) Contracting (Sandia, USGS, USARS)
 - b) Personnel/Reduction in Force Notice
 - c) GAO and IG audits
 - d) Records management
 - e) Moves from Nevada site office, Dave Zabransky (RW) - 5 mins

Discussion Points:

Discussion topics:

1. Out year budget issues:

Attached you will find the "budget" of RW out year cost estimates for FY2011, 2012, and beyond that S3 (Rob), RW, GC, LM, NE, and EM have all commented on. This has been a very collaborative process over the past few weeks. These numbers are estimates of what is needed moving forward. More vetting will be needed before submission to OMB. I have allotted the first 15 minutes of the meeting so we can review these numbers (line by line) and make sure that everyone is on the same page.

2. Post-2010 RW responsibilities:

The issue of Yucca mountain site ownership and site remediation is still unsolved. We have drafted a letter "attached" that have been commented on by S3 (Asaf), GC, NE, LM, RW, EM, and NNSA. I have allotted 10 minutes during the meeting for folks to read the document and comment as a group. Currently, EM is stating that LM should be the office to handle clean up, since it's not traditional remediation work. LM is stating that responsibility should be in EM's purview. NNSA is stating that they do not want to be owner of the property because there is no assurance in the long term that they will be exempt from clean-up responsibility of the site.

Updates:

1. Personnel: *Provided by Dave Zabransky*

- EERE and MA have selected RW staff to fill 24 temporary positions. Job offers will be conditional until funding for these positions is secured.
- NE will be posting several temporary positions to support RW closeout activity. These positions (3) can be located in DC or Las Vegas.
- Five RW staff transferred to GC effective June 6.
- GC is conducting interviews this week to fill vacancy in the positions transferred from RW to GC. Eleven positions are available.
- HQ HC is preparing Reduction in Force notice for RW employees. It is currently planned to issue these letters on July 7 to RW staff that have not found other positions as of that date. Employees will be notified that they will receive RIF letters on June 30.
- RW continues to process early-out and buy-out requests.

2. Contracting: *Provided by Dave Zabransky*

- Revised guidance letters were issued to Sandia National Laboratories and the USGS on June 21.
- RW received the USA RS Business Case for Pension, Retiree Medical, and Workers' Comp Programs on 6/9/10. This has been shared with GC, MA and LM. Discussions are underway to determine the appropriate actions.
- RW staff is working with GC in finalizing numerous letters to other minor RW contractors.

3. GAO and IG Audits: *Provided by Dave Zabransky*

- The response to GAO letter to the Secretary seeking information on the Yucca Mountain will be transmitted last week. The letter is signed by RW.

4. Records Management:

- LM is in the process of assuming responsibility for LSN and other records.
- RW is working with LM to provide funding source for FY2010 activities
- Resolution needed on disposition of e-mail records warehouse.

5. Nevada Office and site:

- Preparations are underway to move NE and GC staff from the RW offices to the Nevada Site Office (NSO). The first move is expected to occur around July 9. EERE staff will be moved the following week. Remaining RW staff will remain in Hillshire building through July, and move to the NSO when time permits.
- Yucca Mountain site activities will cease on June 30. DOE must provide notice to other parties (State, BLM, Air Force, Nye County) transferring permits to successor organization.

Next steps:

- Keep working on out year budget and send to CFO
- Settle issues of who will be landlord of the RW site as well as who will clean up the site
- Make sure that RW is conducting all due diligence with stop work letters, RIFs, office close down and moving, audits, and legal processes.

Attachments:

1. RW Agenda – 6-28-10
2. Status updates from the previous RW meeting - 6-15-2010
3. Memo on RW scope of work after shut down
4. RW out year costs spreadsheet

RW Meeting:

7A-219

Thursday, July 15th, 10:15AM-11:00AM

Meeting requested by Kristina Johnson

Briefing prepared by Ben Steinberg, 202-253-0859

Overview:

This meeting will focus on four areas:

- 1) RW out year costs post-2010
- 2) RW pensions
- 3) Responses to Nye County, IG, and USARS inquiries
- 4) Updates on stop work letters with contractors and reduction in force notices, etc.

Background:

Action Item	Point Person (Office)	Due Date	Status
1. Modify RW out year cost table in LM and NE sections	Ben Steinberg (S3)	6/28	Completed
2. Send out GAO response letter	Dave Zabransky (RW)	6/28	Completed
3. Make corrections to "RW scope of work post-2010" memo and redistribute to the RW working group for comment	Ben Steinberg (S3)	6/29	Completed
4. Create funding stream from RW to LM for two FTEs to work on preservation of RW documents.	Dave Geiser (LM)/Dave Zabransky (RW)/ Chris Hanson (CFO)	7/1	In process
5. Send out Reduction In Force notices	Dave Zabransky (RW) with HC	7/7	Completed

Agenda:

1. Discussion about out year RW cost estimates AND justification memo for which programs will own various components of out-year responsibilities, *Rob Sandoli (S3)/ Dave Zabransky (RW)/ Chris Hanson (CFO) – 10 mins*
2. Discussion about potential RW hearing – *Dave Zabransky (RW)/ Jonathan Levy (CI) - 10 mins*
3. Discussion about RW pensions, *Dave Geiser (LM) - 10 mins*
4. Discussion about IG, Nye County, and USARS responses, *Dave Zabransky (RW) – 10 mins*
5. Updates on:
 - a) Personnel/Reduction in Force Notice
 - b) Records management
 - c) Moves from Nevada site office, *Dave Zabransky (RW) - 5 mins*

Discussion Points:

1. Out year budget issues AND letter describing "owners" of RW out year activities: 10 mins
Attached you will find the most up to date "budget" of RW out year cost estimates for FY2011, 2012, and beyond. The last few meetings we spent a lot of time on this. It will be good to circle back on this and see if we are closer now to proper cost estimates.

In addition, we have spent a lot of time talking about site ownership and remediation of Yucca Mountain. To make a final determination on these issues, conversations will need to take place outside the working group between you, EM-1, S5, and other key senior leaders. You may want to make sure that people get to voice their opinions, ideas, and concerns.

Note: GC has temporarily taken over the Yucca Mountain land permits. They will do this until a final determination is made for who "owns" the site.

2. Potential RW Hearing: 10 mins

Today, I heard from Dave Zabransky that YOU may have to testify in front of Congress about RW. Originally, Jonathan Levy (CI) told Dave Zabransky (RW), that Dave and Scott Harris (GC) would be testifying. As recently as yesterday we were told it would be you instead. Dave Zabransky has offered to start drafting testimony. Asaf has given him the green light on this. Dave, would like to hear from you and others about what your/DOE's current message is to Congress. This will help him with content and tone for writing the hearing.

3. RW Pensions: 10 mins

Dave Geiser and the LM team put together a one-pager on pension issues for RW employees. Dave will be presenting their findings and recommendations for RW pensions at this meeting. His one-pager is attached.

Summarized as Dave explains, 1) DOE spends \$8M upfront to annuitize the pensions which reduces risk and pays for the pensions right now, OR 2) We pay the minimum cost of approximately \$1M for the pensions over a longer period, which would cost less now, but could be riskier later, as markets fluctuate.

4. Responses to IG, Nye County, and USARS: 10 mins

- a. Inspector General (IG): S3 is responsible for responding to the Inspector General about their concerns with RW closeout. Asaf has talked to Greg Friedman about this (IG). We have drafted a response with feedback from GC and PA. Attached is a copy of this letter. We will circulate the newest version of the letter before getting your sign off. In addition, I have included a copy of the IG's report on Yucca for your information.
- b. Nye County: Nye County (where Yucca Mountain is located) has been receiving tens of millions of dollars from DOE for civic purposes for years. Therefore, it is of no surprise that they have written DOE to state that they should be part of the closeout activities and DOE should pay them for these efforts, including their suggestion to be the custodian of the physical rock samples. Attached is the letter from Nye County. We will need to respond to their request shortly.
- c. USARS: USARS wrote us a letter stating that they are not happy with the closeout of RW. They signed a 5 year contract and it only lasted 1.5 years. They are asking for \$6M in funding to make up for the fact that we are breaching contract. Dave Zabransky put together a short memo on this for you (attached).

5. Updates: 5 mins

A. Personnel: *(latest information attached)*

- RW will no longer be accepting mail/requests for review from Executive Secretary after 7/31
- Ken Powers finished his work with RW today. He was one of the main people in charge of the transition.
- Reduction in Force notices were sent out. Meetings were held with employees in Las Vegas about this. There are about 40 federal employees left in the Las Vegas office.

B. Records Management:

- LM is in the process of assuming responsibility for LSN and other records.
- RW is working with LM to provide funding source for FY2010 activities.

C. Nevada Office and site:

- Preparations are underway to move NE and GC staff from the RW offices to the Nevada Site Office (NSO). The first moves took place last week. EERE staff is being moved this week. Remaining RW staff will remain in Hillshire building through July, and move to the NSO when time permits.
- Yucca Mountain site activities ceased on June 30. DOE must provide notice to other parties (State, BLM, Air Force, Nye County) transferring permits to successor organization.

Next steps:

- Settle issues of who will be landlord of the RW site as well as who will clean up the site
- Make sure that RW is conducting all due diligence with stop work letters, RIFs, office close down and moving, IG and GAO audits, and legal processes.
- Prepare S3 for potential Congressional testimony.

Attachments:

1. RW Agenda – 7-15-10
2. RW out year costs spreadsheet (version 12)
3. Updated memo on RW scope of work after shut down
4. LM's explanation of RW pension issues
5. Draft response to IG report on RW
6. IG report on RW
7. Nye County letter to S3
8. USARS decision memo
9. Departure update on RW employees

REVISED on March 1, 2011, to correct NRC Form 757, Section C, to reflect three staff members' non-concurrences and their requests that their non-concurrences be made public

February 4, 2011

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Catherine Haney, Director */RA/*
Office of Nuclear Material Safety and Safeguards

SUBJECT: UPDATE ON THE YUCCA MOUNTAIN PROGRAM

The purpose of this memorandum is to describe the status of the Yucca Mountain Program. Since October 1, 2010, the U.S. Nuclear Regulatory Commission (NRC) staff's activities have focused on the orderly closure of the NRC staff's safety review of the license application submitted by the U.S. Department of Energy (DOE) for authorization to construct a geologic repository at Yucca Mountain (YM), NV. This memorandum also describes the staff's plans to capture the knowledge it acquired during more than 3 decades of pre-licensing preparation and more than 2 years of licensing review activities.

Program Status and Termination of Safety Review

Effective on October 1, 2010, the staff ceased its safety review of the YM license application. Consequently, the staff is converting the remaining volumes of its safety evaluation report (SER) ("Volume 3: Review of Repository Safety after Permanent Closure," "Volume 2: Review of Repository Safety before Permanent Closure," and "Volume 4: Review of Administrative and Programmatic Requirements") into technical evaluation reports, which will be published as NUREG reports in the knowledge management series. These reports will document the staff's technical review activities and technical conclusions but will contain no staff findings of regulatory compliance.

Knowledge Capture and Orderly Closure of Supporting Licensing Proceedings

The NRC staff is archiving the institutional, regulatory, and technical knowledge amassed over nearly 3 decades as it evaluated YM and other potential sites for deep geologic disposal of spent fuel and high-level waste. The staff is evaluating and documenting the lessons learned from (1) the development and implementation of site-specific regulations and guidance documents for geologic disposal, (2) the conduct of a licensing proceeding under Subpart J,

CONTACT: Lawrence E. Kokajko, NMSS
301-492-3158

The Commissioners

- 2 -

"Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository," of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and (3) the establishment and the operation of the Licensing Support Network (LSN). The staff will preserve this knowledge as a resource for future use. Associated with this, on October 1, 2010, the staff directed the Center for Nuclear Waste Regulatory Analyses (CNWRA) to stop its license application review activities. The staff redirected CNWRA to focus its YM-related efforts on the preservation of knowledge and records management. As the High Level Waste (HLW) repository knowledge management tasks are completed, CNWRA will transition to non-HLW Repository work using fee-based resources to evaluate the safety and environmental impacts of longer term storage of spent nuclear fuel and to support the staff's development of a longer term waste confidence rulemaking plan.

The NRC staff established priorities for activities it will undertake commensurate with available resources and closure of the licensing review. As part of this effort, the staff will document its technical review of the license application in technical evaluation reports (NUREGs). These reports will capture the scientific findings, knowledge, and experience of the staff's technical review, the development of requests for additional information, and an evaluation of the license application without stating the conclusion that would be needed to support a licensing decision. The first of these, documenting postclosure review activities, is planned for completion in the second quarter of fiscal year (FY) 2011. Resources permitting, reports on the staff's preclosure (Volume 2) and administrative (Volume 4) reviews will follow later in the third and fourth quarters of FY 2011.

During the first quarter of FY 2011, the staff established its process for developing the technical evaluation reports and began preparation of those reports. The staff is responding to a Freedom of Information Act request for access to staff drafts of SER Volumes 2 and 3. Technical staff members continued to provide input to the Office of the General Counsel on adjudicatory hearing-related matters to assist in responding to orders from the Construction Authorization Board 4 (CAB4 or the Board), including directives on case management and identification of witnesses. Departing and other senior technical staff members were interviewed on videotape for knowledge capture and as a future training resource. Personnel from the Office of Administration and the Atomic Safety and Licensing Board Panel (ASLBP or the Panel) initiated discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility (LVHF), including its computer systems, physical infrastructure, and physical security infrastructure. During this period, the high-level waste core group continued discussions about the budget for orderly closure of the YM program to ensure coordination with preparation for renewal of the CNWRA contract and other contractual matters.

Hearing Process and Activities

CAB4 has continued to preside over the YM proceeding after denying the Department of Energy license application withdrawal motion in June 2010. The NRC staff, as required, has kept the Board informed of the status of the staff's application review activities. Specifically, on

The Commissioners

- 3 -

November 29, 2010, the staff informed CAB4 that it would not issue SER Volume 3 in November 2010 as previously planned, and that a revised schedule is indeterminate. On December 8, 2010, CAB4 ordered the staff to submit by December 22, 2010, a full explanation of its schedule change for the issuance of Volume 3 and directed the parties to confer and seek to reach agreement on a discovery status report by January 25, 2011. The staff replied on December 22, 2010, also indicating that the schedule for SER Volumes 4 and 2 was indeterminate. On December 14, 2010, CAB4 ruled on the Phase 1 legal issues and denied petitions for rule waivers. The Board also directed affected parties to submit a joint stipulation, or differing views, regarding the effects of the Board's Phase 1 legal issue rulings on admitted contentions by January 21, 2011. The major parties (including the NRC staff) timely responded and also filed differing views. In addition, DOE filed a January 21, 2011, motion seeking a suspension of the proceeding through May 20, 2011 and Nevada filed a January 20, 2011, motion seeking reconsideration of the rejection of a contention in its initial petition. CAB4 has not yet ruled on the suspension motion.

Absent contrary direction it is our understanding that the Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the Las Vegas Hearing Facility (LVHF), the Licensing Support Network (LSN), and the LVHF component of the Digital Data Management System (DDMS), until the end of FY 2011. At that time shut-down of the infrastructure would need to be accomplished to avoid the agency requiring Nuclear Waste Fund (NWF) money that has not been appropriated in order to complete the shut-down after FY 2011. We understand that ASLBP plans to send a memorandum in February that discusses this matter more fully and includes key action points for an orderly shutdown.

Resources

[

]

[

]

The Commissioners

- 4 -

Coordination

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Three staff members in NMSS filed non-concurrences on this memorandum (Enclosures 2-4). These non-concurrences are included in the interest of providing the Commission with alternative views.

This paper contains pre-decisional procurement and budget information and should be withheld from public disclosure.

Enclosures:

1. [
-]
2. Non-Concurrence dated January 18, 2011
3. Non-Concurrence dated February 1, 2011
4. Non-Concurrence dated February 2, 2011

cc: SECY
EDO
OGC
OCA
OPA
CFO
ASLBP

The Commissioners

- 4 -

Coordination

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Three staff members in NMSS filed non-concurrences on this memorandum (Enclosures 2-4). These non-concurrences are included in the interest of providing the Commission with alternative views.

This paper contains pre-decisional procurement and budget information and should be withheld from public disclosure.

Enclosures:

1. [

]

2. Non-Concurrence dated January 18, 2011
3. Non-Concurrence dated February 1, 2011
4. Non-Concurrence dated February 2, 2011

cc: SECY
EDO
OGC
OCA
OPA
CFO
ASLBP

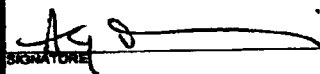
[

]

I

I

Enclosure 1

NRC FORM 757 NRC 680 10-199 03-2008		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103146391	
DOCUMENT SPONSOR Catherine Haney		SPONSOR PHONE NO. 301-492-3554	
NAME OF NON-CONCURRING INDIVIDUAL Aby Malacal		PHONE NO. 301-492-3182	
<input type="checkbox"/> DOCUMENT AUTHOR <input checked="" type="checkbox"/> DOCUMENT CONTRIBUTOR <input checked="" type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE			
TITLE Deputy Director		ORGANIZATION HLWRS/NMSS	
REASONS FOR NON-CONCURRENCE <p> Although the Commission Memorandum describes the current status of the program, it also addresses a path forward that seems to me to contain policy issues that require Commission direction or guidance. For example, whereas the application of Nuclear Waste Funds in FY 2011 was only authorized for orderly shutdown activities under a CR guidance and as specifically directed by the Chairman, the ongoing ASLE hearings require that those funds also support legal activities in ongoing Yucca Mountain licensing proceedings. If there are no constraints in using FY2011 or carryover NWF monies to support licensing activities, then it would be a policy issue to direct the staff to apply resources to orderly shutdowns instead of completing and issuing the remaining SER volumes, especially since the Commission has not reversed the ASLEP's decision that denied DOE's motion to withdraw its application. The Memorandum also indicates that fee-based resources (rather than NWF) might be needed to shut down the Las Vegas Hearing Facility, which would be another policy issue, in my opinion. </p> <p> For the reasons above, I respectfully refuse to concur. </p>			
SIGNATURE 		<input type="checkbox"/> CONTINUED IN SECTION D	
		DATE 1/18/2011	
AND COPY TO YOUR IMMEDIATE SUPERVISOR AND PROGRAM MANAGER			

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT: Update on the Yucca Mountain Program ADAMS ACCESSION NO.: ML103140391

SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)

NAME: Laura E. Kojak
TITLE: Director, Division of High-Level Waste Reporting Safety PHONE NO.: 801-492-3158
ORGANIZATION: NMSS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER
 I HAVE NO COMMENTS
 I HAVE THE FOLLOWING COMMENTS
See attached sheet.

CONTINUED IN SECTION D

SIGNATURE: [Signature] DATE: 18 Feb 2011

Re: Memorandum to the Commission entitled, "Update on the Yucca Mountain Program"

Given the unique nature of the NRC's High-Level Waste Program, its associated review of the DOE Yucca Mountain license application, and its attendant internal and external issues, it seems reasonable to expect that professional staff can differ in what constitutes a policy question suitable for Commission deliberation. Mr. Aby Mohseni, Deputy Director for the Licensing and Inspection Directorate in the Division of High-Level Waste Repository Safety, suggests that there are embedded in this memorandum at least two policy matters appropriate for the Commission to consider: (1) application of Nuclear Waste Funds for orderly closure while the licensing proceeding is still ongoing; and (2) use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure (such as LSN). The Commission itself has not yet decided on the ASLBP CAB-4 ruling (LBP-10-11), and there is enough complexity and uncertainty to suggest that the staff seek Commission direction on these issues rather than have the staff provide, in essence, a status report. While the Commission could make this memorandum a voting matter on its own once it is received, it seems more appropriate for Agency senior leadership to acknowledge it at the outset. I believe this is Mr. Mohseni's view.

Therefore, while either way could lead to the same outcome (i.e., Commission deliberation on orderly closure and funding), I tend to agree with Mr. Mohseni that the embedded policy matters should be addressed at the outset.


Lawrence E. Kokajko, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

18 January 2011

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT
Update on the Yucca Mountain Program

ADAMS ACCESSION NO.
ML103148391

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME
Catherine Haney

TITLE
Office Director

PHONE NO.
301-492-3554

ORGANIZATION
NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

- See Attached -

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR
C Haney

DATE
2-4-11

SIGNATURE - DOCUMENT SIGNER
C Haney

DATE
2-4-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

- | | |
|---|---|
| <input checked="" type="checkbox"/> CONCURS | <input type="checkbox"/> WANTS NCP FORM PUBLIC |
| <input type="checkbox"/> NON-CONCURS | <input checked="" type="checkbox"/> WANTS NCP FORM NON-PUBLIC |
| <input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process) | |

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Updated on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML110540412

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

Section C revised on March 01, 2011, to reflect that the non-concurring individual would like the NCP Form to be made public and that he/she non concurs on the document.

See Attached

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

3-1-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

3-1-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

CONCURS

NON-CONCURS

WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

WANTS NCP FORM PUBLIC

WANTS NCP FORM NON-PUBLIC

I carefully considered the concerns raised in Mr. Mohseni's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Prior to, and immediately after he filed the non-concurrence, Mr. Mohseni and I discussed his concerns with the memo. Since Mr. Mohseni filed his non-concurrence, the memorandum has been revised to reflect new resource information and recent discussion with the ASLBP regarding closure of the Las Vegas Hearing Facility (LVHF) and the associated infrastructure. Subsequent to this last revision, Mr. Mohseni was given the opportunity to revise his non-concurrence based on the revised memo. He chose not to revise his statement.

Mr. Mohseni believes there are at least two policy issues embedded in the memorandum:

1. Application of Nuclear Waste Funds for orderly closure instead of supporting hearing and licensing activities, including issuance of the remaining SER volumes.
2. Use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure (such as LSN).

The purpose of the memorandum to the Commission is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. The memo was not intended to raise policy issues or topics that have previously been discussed and resolved at the Commission level.

The application of Nuclear Waste Funds (NWF) for orderly closure instead of completing and issuing the remaining SER volumes has been well vetted with the Commission. I am not aware of any new information that would warrant raising it as a policy matter in this memorandum. For example, in a October 6, 2010, memorandum to Chairman Jaczko and Commissioners Svinicki, Magwood, and Apostolakis (COMWCO-10-002), Commissioner Ostendorff stated that use of FY 2011 Continuing resolution funds "is a significant policy matter that I believe warrants the Commission's attention, and which requires that the Commission give direction to the staff to avoid confusion on the Commission's intent for operation under the Continuing Resolution." He went on to propose that ". . . Staff continue to follow the pre-established schedule for the SER and issue the remaining SER Volumes accordingly." This matter was subsequently closed by Annette Vietti-Cook's October 14, 2010, memorandum to Commissioner Ostendorff that stated, "A majority of the Commission declined to participate on this matter. In the absence of a quorum, your proposal is not approved."

Use of funds to support continued review of the Yucca Mountain application was the topic of several Congressional letters. In an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML102980673) Chairman Jaczko responded to Congressman Sensenbrenner's concerns about reports regarding the NRC's review of DOE's Yucca Mountain application. The response to Question 1 (quoted below) also indicates that the Commission has already considered Mr. Mohseni's first issue.

*Question 1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?

O Answer - Neither the text of the Fiscal Year (FY) 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the Fiscal Year 2011 Continuing Resolution provide the Commission with express direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. In the absence of an express direction, the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice. The Commission declined to revisit this decision in voting earlier this month."

I am mindful that there are limited resources available to complete orderly closure activities during FY2011 while the NRC hearing activities and Federal court litigation is ongoing. As of December 28, 2010, 1.8 FTE has been expended by the ASLBP and OGC to support the ongoing ASLBP hearing and litigation in the U.S. Court of Appeals for the District of Columbia. (As a reference point, NMSS has expended 9.0 FTE.) Expenditure of FY2011 HLW funds, in this manner, has been supported by OEDO, OGC, ASLBP, and CFO, and has not been viewed to be a matter of policy although these offices and I recognize that use of the funds to support NRC hearings should be closely monitored because they could consume NWF resources that are currently needed for orderly closure in FY 2011. In addition, because there are no HLW funds in FY 2012, depletion of NWF money would bring the administrative hearing process to a halt in FY 2011.

In response to Mr. Mohseni's second concern that the memorandum contains an embedded policy issue regarding use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure, the memorandum has been revised to reflect several recent discussions with CFO, ASLBP, NMSS, and OGC. Originally, the memorandum stated that the Atomic Safety and Licensing Board "Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the LSN, the LVHF, and the LVHF component of the Digital Data Management System (DDMS), until the Panel receives direction from the Commission to implement the closure of that infrastructure." The memorandum previously notes that "since no Nuclear Waste Fund (NWF) resources are available in FY 2012, starting on October 1, 2011, fee-based funds will be needed to support the LVHF and its infrastructure." The revised memorandum no longer raises the issue of using fee based funds to close the Las Vegas Hearing Facility or other YM hearing infrastructure. This change was made to clearly inform the Commission that orderly closure would be accomplished this fiscal year with available NWF money. Therefore, Mr. Mohseni's second issue is no longer raised by the memorandum.

Catherine Haney
2-3-11

NON-CONCURRENCE PROCESS

SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL

TITLE OF DOCUMENT Update on the Yucca Mountain Program	ADAMS ACCESSION NO. ML163146391
DOCUMENT SPONSOR Catherine Hasey	SPONSOR PHONE NO. 301-492-3554
NAME OF NON-CONCURRING INDIVIDUAL Janet P. Kotra	PHONE NO. 301-492-3190

DOCUMENT AUTHOR DOCUMENT CONTRIBUTOR DOCUMENT REVIEWER ON CONCURRENCE

TITLE Senior Project Manager	ORGANIZATION NMSS/NMSS/PMSS
---------------------------------	--------------------------------

REASONS FOR NON-CONCURRENCE

I have prepared and revised copious variations of this memorandum. When, on June 14, 2010, the Chairman ordered the Director of NMSS to postpone issuance of Safety Evaluation Report Volumes 1 and 3, HLWRS and NMSS managers became concerned the entire Commission may not be fully aware of the policy, legal and budgetary consequences of such redirection. Some believed that a diligent staff, struggling to honor conflicting obligations, needed programmatic and policy guidance from the entire Commission armed with a fair assessment of the facts. I was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed. Later, in September, it became clear that, rather than postpone issuance of individual SER volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman, through OEDO and the CFO, told staff that all work on the SER must stop, including Volume 3 on post closure safety, which was already complete, and undergoing management review. Written guidance to this effect appeared later, in an October 4, 2010 memorandum. The Chairman later met with the Yucca Mountain Team on October 12, 2010. He explained that the decision to shut down the staff's review of the application was his alone and that staff should move to orderly closure of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and the Commission has yet to issue a decision on whether DOE may legally withdraw the application. Over time, repeated rounds of comment (formal and otherwise) from OEDO, the CFO and the General Counsel were incorporated. Time and again these comments diluted or contradicted the direct language offered by NMSS and ASLEP staff. Both staff sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down a complex and valuable national program and infrastructure while still supporting an ongoing hearing process. This now long-suffering memorandum is characterized as a "status report." Throughout its tortured evolution, I continued to make countless changes during a most unorthodox process, despite growing reservations, so long as the description of the program's history and status remained reasonably accurate. At this juncture, I can no longer support this memorandum. I believe

CONTINUED IN SECTION D

SIGNATURE <i>Janet Phelan Kotra</i>	DATE 2/1/2011
--	------------------

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.
ML193148391

SECTION D: CONTINUATION PAGE

CONTINUATION OF SECTION

A B C

that, in its present form, this memorandum appears to imply that the NMSS staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a fair and impartial hearing process for that application. It has been my experience that members of the NMSS staff, who have conducted a fair, independent and technically sound safety review, and who worked earnestly to prepare the required Safety Evaluation Report, stood down from that duty only with enormous reluctance. As currently drafted, this memorandum makes no reference to the facts surrounding the Chairman's termination of the NRC staff's review of the Yucca Mountain license application. Absent this crucial context, a reader is left with the mistaken impression that this termination and the "orderly shutdown" of the NRC staff's licensing review and hearing process was staff's preferred and well-considered course of action, initiated by the NRC's technical staff. Nothing could be further from the truth. Furthermore, absent proper context, the reader would also conclude that NMSS staff prepared this memorandum to inform a passive Commission about "staff's" course of action, after the fact, to alert the heretofore uninformed Commission about problems and difficulties to which "staff's" course have led. For these reasons, I must respectfully withdraw my concurrence of December 2, 2010.

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103140391

SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)

NAME

King Stablein

TITLE

Chief, Projects Branch B, Division of High-Level Repository Safety

PHONE NO.

301-492-3199

ORGANIZATION

NMSS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

I HAVE NO COMMENTS

I HAVE THE FOLLOWING COMMENTS

I agree wholeheartedly with Dr. Kotra's comments and agree specifically that this status report lacks the necessary context and information to adequately characterize the confusion, chaos, and anguish occasioned by the Chairman's unilateral decision to disrupt the orderly process of SER development. My nonconcurrency comments will amplify some of the points made by Dr. Kotra.

CONTINUED IN SECTION D

SIGNATURE

King Stablein

DATE

2/2/11

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103140391

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

- see attached -

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

2-4-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

2-4-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

CONCURS

NON-CONCURS

WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

WANTS NCP FORM PUBLIC

WANTS NCP FORM NON-PUBLIC

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Updated on the Yucca Mountain Program

ADAMS ACCESSION NO.
ML110540412

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

Section C revised on March 01, 2011, to reflect that the non-concurring individual would like the NCP Form to be made public and that he/she non concurs on the document.

See Attached

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

3-1-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

3-1-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

CONCURS

NON-CONCURS

WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

WANTS NCP FORM PUBLIC

WANTS NCP FORM NON-PUBLIC

NON-CONCURRENCE PROCESS

SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL

TITLE OF DOCUMENT UPDATE ON THE YUCCA MOUNTAIN PROGRAM	ADAMS ACCESSION NO. ML103140391
DOCUMENT SPONSOR Catherine Hasey	SPONSOR PHONE NO. 301-492-3554
NAME OF NON-CONCURRING INDIVIDUAL King Stabile	PHONE NO. 301-492-3199

DOCUMENT AUTHOR DOCUMENT CONTRIBUTOR DOCUMENT REVIEWER ON CONCURRENCE

TITLE Branch Chief	ORGANIZATION NMSS/HLWRS
------------------------------	-----------------------------------

REASONS FOR NON-CONCURRENCE
Please see attached document.

CONTINUED IN SECTION D

SIGNATURE *King Stabile*

DATE **2/2/11**

**Reasons for King Stablein's Nonconurrence on Memorandum to the Commission entitled
"Update on the Yucca Mountain Project"**

As Dr. Kotra's direct supervisor, I have witnessed her efforts to prepare and revise this memorandum over the past few months, and we have engaged in continual discussions about whether or not we could support the contents as they twisted and turned to accommodate the many agendas that were influencing the direction of the memo. We grew more and more uncomfortable as we came to understand that neither the context for the current state of the Yucca Mountain program nor the policy issues affecting the program were intended to be part of the final product. I have come to conclude that the memo does not provide the Commission with important information regarding the program, but rather, appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011. In her non-concurrence, Dr. Kotra has skillfully illuminated many fundamental issues with the memo, and I fully support what she has written. In addition, I want to add some thoughts of my own.

Until the Chairman unilaterally brought development of the SER to a halt as of September 30, 2010, the High-Level Waste Repository Safety (HLWRS) staff was on track to deliver all five volumes of the SER in the first part of FY 2011. Volume 3, the key postclosure volume, was virtually complete and could have been issued by the November 2010 date that staff had given to ASLB. When the Chairman met with the HLWRS staff on October 12, 2010, it was pointed out to him that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear during this meeting that, although he recognized that he could choose that path, his view was that it would look more political to publish the SER volumes with findings than to issue them as Technical Evaluation Reports (TERs). Despite his audience's incredulity regarding this position, the Chairman said that the decision was solely his and that he chose to derail the SER development process while directing the staff to begin orderly shutdown of the Yucca Mountain program.

This decision has had profound effects on the Yucca Mountain program, none of which are reflected in the subject status report. As a supervisor in this program, I am keenly aware of the agony experienced by the HLWRS staff as they dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To not be allowed to finish the SER, the culmination of those years of precicensing and licensing activity, because of what appears to be the arbitrary decision of one person, was wrenching for the staff. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a program that has existed for 30 years. It felt to the staff as if the Chairman had casually dismissed the staff's sacrifices and effort of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled. The staff would

have greatly appreciated, given the importance of this decision, an opportunity to share its views with the entire Commission. There is no recognition in this status update of the staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made.

There is also no recognition in this memorandum of the difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application. The staff has been caught in a bind which it felt itself incapable of escaping as it attempts to follow the Chairman's direction to carry out orderly closure of the program. Confronted with the reality that there is still an active application before ASLB, certain activities in the staff's Orderly Closure Plan were considered by staff to require that the Commission allow DOE to withdraw its application before staff could carry out those activities. One example is the disposition in the National Archives of the documents that have been needed during the licensing process. The staff, many of whom have been in this program for 20 years or more, are acutely aware of the NWPA and the argument that ASLB crafted in rejecting DOE's request to withdraw its application. Staff should not be put in a situation where the direction from the Chairman appears to be in direct conflict with the NWPA and the fact of an active license application. Absent policy decisions from the Commission, staff has struggled on a daily basis to figure out how to cope with this bizarre situation in a manner which would enable staff to maintain its integrity.

For these reasons, as well as those expressed so eloquently by Dr. Kotra in her nonconurrence, I respectfully decline to concur on this status update memo.

King Stablein 2/3/11

King Stablein, Chief
Projects Management Branch B
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

I carefully considered the concerns raised in Dr. Kotra's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Over the last several months, I have met with Dr. Kotra to discuss her concerns on transitioning the Yucca Mountain Program towards closure. Most recently, I met with Dr. Kotra on January 31, 2011, to discuss the concerns she planned to raise with the most recent version of the memorandum. Based on these discussions and my review of her non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Kotra notes in her opening statement that she has "prepared and revised copious variation of this memorandum". She also states that "over time, the memo has been revised to dilute or contradict "the direct language offered by NMSS and ASLBP staffs. Both staffs sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down and complex and valuable national program and infrastructure while still supporting an ongoing hearing process." Dr. Kotra states that "In its present form, this memorandum appears to imply that the NMSS staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for the application. . . . As currently drafted this memorandum makes no reference to the facts surrounding the chairman's termination of the NRC staff's review of the Yucca Mountain license application."

Dr. Kotra is correct in her statement that there have been many iterations of this memorandum. This was due to the evolving nature of the program and the information that I felt needed to be conveyed to the Commission. Dr. Kotra states that she "was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed." Over time, the purpose of the paper evolved. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. Potential policy issues associated with the closure of the Yucca Mountain project had been decided at the Commission level (reference my response to Mr. Mohseni's non concurrence on this same memo). I am not aware of any new information regarding program closure that would warrant raising it as a policy matter in this memorandum nor did I believe it necessary to raise any facts surrounding the termination of staff's review in this status paper.

Lastly, I do not agree with Dr. Kotra's statement that the "memorandum appears to imply that the NMSS staff voluntarily, or worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for the application. The memorandum was not intended to document or revisit past decisions on the Project.

Catherine Dancy

2-3-11

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

ADAMS ACCESSION NO.

**SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)**

NAME

Aby Mohseni

TITLE

Deputy Director

PHONE NO.

301-492-3181

ORGANIZATION

NRC/NMSS/DELWRS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

- I HAVE NO COMMENTS
 I HAVE THE FOLLOWING COMMENTS

As Dr. King Stablein's supervisor, I agree with his characterization of the program and the shortcomings of the memorandum. I would furthermore point to the inconsistency of the NRC Solicitor's characterization of the status of the program as being suspended due to the Continuing Resolution, implying a temporary and reversible status. In an email to a staff inquiry, the Solicitor agreed with the following characterization:

"In December 2010, the U.S. Court of Appeals lifted a prior order that had held four lawsuits against DOE in abeyance. The Court's December order set the lawsuits for full briefing and for oral argument. All briefs now have been filed, and the Court is scheduled to hear oral argument on March 22, 2011. The lawsuits against DOE claim that DOE has no authority to withdraw the Yucca Mountain license application, and that Congress must specifically authorize such action. As the appeals court proceeding has moved forward, and in view of NRC's limited budget resources under the current Continuing Resolution, NRC has suspended review of the Yucca Mountain license application, and NRC has stated it has no schedule for completion of the review."

This statement is inconsistent with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas Hearing Facility in FY 2011.

CONTINUED IN SECTION D

SIGNATURE



DATE

2/3/2011

SEND THIS PAGE TO DOCUMENT SPONSOR

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT: **Update on the Yucca Mountain Program** ADAMS ACCESSION NO. **ML103140391**

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME: **Catherine Haney**

TITLE: **Office Director** PHONE NO. **301-492-3554**

ORGANIZATION: **NMSS**

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)
- see attached -

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR <i>Catherine Haney</i>	DATE <i>2-4-11</i>	SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>	DATE <i>2-4-11</i>
--	-----------------------	---	-----------------------

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

- | | |
|---|---|
| <input type="checkbox"/> CONCURS | <input type="checkbox"/> WANTS NCP FORM PUBLIC |
| <input checked="" type="checkbox"/> NON-CONCURS | <input checked="" type="checkbox"/> WANTS NCP FORM NON-PUBLIC |
| <input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process) | |

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Updated on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML110540412

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

Section C revised on March 01, 2011, to reflect that the non-concurring individual would like the NCP Form to be made public and that he/she non concurs on the document.

See Attached

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

3-1-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

3-1-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

CONCURS

NON-CONCURS

WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

WANTS NCP FORM PUBLIC

WANTS NCP FORM NON-PUBLIC

I carefully considered the concerns raised in Dr. Stablein's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." On February 2, 2011, prior to him filing the non-concurrence, I met with Dr. Stablein to discuss his concerns with the memorandum. Based on this discussion and my review of his non-concurrence, I do not believe that changes are needed to the memorandum.

Dr. Stablein notes several items that are omitted from or not recognized in the memorandum. They are as follows:

- Important information regarding the program
- The "profound effects" of the decision to transition the Yucca Mountain Program to closure are reflected in the subject status report.
- "...staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made."
- "...difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application."

Dr. Stablein further states that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011."

Mr. Mohseni, Dr. Stablein's supervisor, in his comments on Dr. Stablein's non-concurrence states that he agrees with Dr. Stablein's characterization of the program and the shortcomings of the memorandum. In addition, Mr. Mohseni identifies perceived inconsistency with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas hearing Facility in FY 2011 and comments by the NRC Solicitor on a draft IAEA document that imply a temporary and reversible status (reference Mr. Mohseni's comments on Dr. Stablein's non-concurrence).

I have reviewed the list of items that Dr. Stablein believes were omitted from or not recognized in the memorandum and his statement that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011." I believe that they all fall outside of the scope of the memorandum or are not needed. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities.

I have also been informed by the NRC Solicitor that his comments on an interim draft of an IAEA document were not meant to suggest a temporary "suspension" of YM due to budget constraints. The term was drafted by others and his focus was on accurately characterizing the status of Federal court litigation. He understands that the staff is engaged in orderly closure activities. As directed, our FY 2011 activities are focused on the orderly closure of the Program and not on completion of the Safety Evaluation Reports. As stated by the Chairman in

an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML 102980673), "the approach the NRC is following is consistent with the terms and the Continuing Resolution, the Commission's Fiscal 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice." The approach described in the memorandum is endorsed by the OEDO, CFO, and OGC and the memorandum describes the resource limitations on completing activities in FY2011.

Catherine Hawley
2-3-11