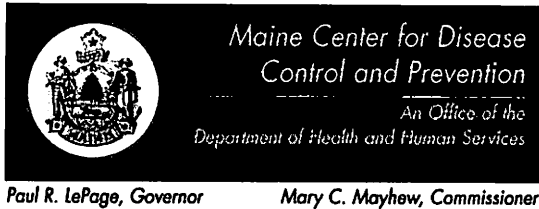


MAINE STATE LEGISLATURE

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April 22, 2011

To: Honorable Mr. Kevin L. Raye, President of the Senate
Honorable Mr. Robert W. Nutting, Speaker of the House

Subject: State Nuclear Safety Inspector Office's January through March 2011 Monthly Reports to the Maine Legislature

As part of the State's long standing oversight of Maine Yankee's nuclear activities, legislation was enacted in the second regular session of the 123rd and signed by Governor John Baldacci requiring that the State Nuclear Safety Inspector prepare a monthly report on the oversight activities performed at the Maine Yankee Independent Spent Fuel Storage Installation facility located in Wiscasset, Maine.

Enclosed please find the Inspector's January through March 2011 monthly activities reports. The submission of these reports was temporarily delayed due to other competing work. Future reports will be submitted in a timely manner as they were consistently provided on a monthly basis prior to this recent departure. The major highlights for the reports locally are: Maine Yankee submitted its fifth and final Radiological Groundwater Monitoring Report, the preliminary working draft of the Confirmatory Summary Report detailing the State's decommissioning findings is complete and under review, and Maine Yankee's 2010 Decommissioning Funding Assurance Status Report shows a gain of \$2.4 million over last year for a fund balance of \$98.1 million and a decrease in projected costs of \$9.7 million for a total of \$110.2 million out to 2023.

The national highlights for the first quarter include:

January

- The U.S. Court of Appeals set March 22nd for litigation over the Yucca Mountain Project.

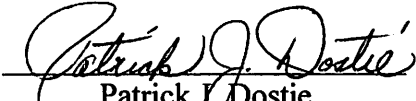
February

- The states of Connecticut, New York, and Vermont file a lawsuit with the U.S. Court of Appeals for the DC Circuit against the Nuclear Regulatory Commission's (NRC) Waste Confidence and Temporary Storage Rules for spent nuclear fuel.
- Other environmental groups, like the Natural Resources Defense Council, follow the states' lead and file suit over the same NRC rules.
- The Department of Energy (DOE) issues a draft Environmental Impact Statement for the disposal of Greater-Than-Class C (GTCC) low-level radioactive waste. The nuclear industry has always operated under the pretext that GTCC is a form of high-level waste that will also be buried at Yucca Mountain. The fact that DOE is signaling this waste stream as a form of low-level waste is disturbing as Maine Yankee has four concrete casks with GTCC wastes from the cut-up of the reactor internals at their storage installation in Wiscasset.

March

- The National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute and 16 of its member utilities across the country filed lawsuits in the DC Circuit Court of Appeals to suspend the surcharge on ratepayers.
- The Blue Ribbon Commission on America's Nuclear Future publishes its first report emphasizing the seven key themes from all the public meetings it has held throughout the continental U.S and abroad. They include governance, fees, siting, reactor and fuel technologies, transportation, storage, and disposal.
- The U.S. Court of Appeals hears oral arguments over the Yucca Mountain Project.
- The congressional interchange between the House Committees on Energy and Commerce, and Science, Space and Technology, with the Nuclear Regulatory Commission's Chairman, Dr. Jaczko, and Energy Secretary Chu on the Administration's termination of Yucca Mountain results in an investigation into the halting of the Yucca Mountain Program.
- Five of the nine counties in Nevada support the Yucca Mountain Project, especially Nye County in which Yucca Mountain is located.

Please note that the reports will not feature the glossary and the historical addendum as in previous years. However, both the glossary and the addendum are available on the Radiation Control Program's website at <http://www.maineradiationcontrol.org> under the nuclear safety link. Should you have questions about the reports' contents, please feel free to contact me at 207-287-6721, or e-mail me at pat.dostie@maine.gov.


Patrick J. Dostie
State Nuclear Safety Inspector

Enclosures

cc: Ms. Vonna Ordaz, U.S. Nuclear Regulatory Commission
Ms. Nancy McNamara, U.S. Nuclear Regulatory Commission, Region I
Mr. James Connell, Site Vice President, Maine Yankee
Ms. Mary Mayhew, Commissioner, Department of Health and Human Services
Ms. Jennifer Duddy, Senior Director of Legislative and Public Relations, Depart. of Health and Human Services
Dr. Sheila Pinette, Director, Maine Center for Disease Control and Prevention
Senior Policy Advisor, Governor's Office
Mr. James Brooks, Acting Commissioner, Department of Environmental Protection
Mr. Richard Davies, Maine Public Advocate
Lt. Christopher Grotton, Special Services Unit, Maine State Police
Ms. Nancy Beardsley, Director, Division of Environmental Health
Mr. Jay Hyland, PE, Manager, Radiation Control Program

State Nuclear Safety Inspector Office

February 2011 Monthly Report to the Legislature

Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 123rd Legislature, the foregoing is the monthly report from the State Nuclear Safety Inspector.

The State Inspector's individual activities for the past month are highlighted under certain broad categories, as illustrated below. Since some activities are periodic and on-going, there may be some months when very little will be reported under that category. It is recommended for reviewers to examine previous reports to ensure connectivity with the information presented as it would be cumbersome to continuously repeat prior information in every report. Past reports are available from the Radiation Control Program's web site at the following link: www.maineradiationcontrol.org and by clicking on the nuclear safety link in the left hand margin.

Commencing with the January 2010 report the glossary and the historical perspective addendum are no longer included in the report. Instead, this information is available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and may redirect the reviewer to the website.

Independent Spent Fuel Storage Installation (ISFSI)

During February the general status of the ISFSI was normal. However, there were two snowstorms that required the implementation of additional measures that were terminated after the snowstorms. There were no instances of spurious alarms due to environmental conditions.

There were no fire or security related impairments in February. There were, however, eleven security events logged (SEL) for the month. All of the SELs were associated with transient environmental conditions including the snowstorms.

There were four condition reports¹ (CR) for the month of February and they are described below.

1st CR: Documented minor damage to a conduit during snow removal. The conduit was nicked but there was no damage.

2nd CR: Was written to track actions from a review of the Emergency Plan.

3rd CR: Documented damage to a signal wire during snow removal. The chirper box was originally installed to scare birds, but did not work as expected. The device was removed.

4th CR: Was written to document an omission of a check off while performing fire extinguisher surveillances. The periodic maintenance checks were performed on all the units, but the check off of one of the units was overlooked.

¹ A condition report is a report that promptly alerts management to potential conditions that may be adverse to quality or safety. For more information, refer to the glossary on the Radiation Program's website.

Other ISFSI Related Activities

1. On February 8th Maine Yankee submitted its 34th revision of the ISFSI's Off-Site Dose² Calculation Manual (ODCM). The ODCM contains the approved methodologies for estimating doses beyond the ISFSI's site boundary. The ODCM describes the facility's radiological monitoring program and how the thermoluminescent dosimeters³ (TLD) demonstrate compliance with federal regulations. One of the changes specified a quarterly frequency for the TLDs to be analyzed. Another change included the estimated dose report to be part of the annual radiological environmental operating report. The remaining changes were essentially editorial.
2. On February 14th Maine Yankee submitted to the Nuclear Regulatory Commission its periodic update to its License Termination Plan. Maine Yankee noted that there were no changes to its current revision 5 that was originally submitted in February of 2009.
3. On February 17th Maine Yankee submitted nine changes to its Emergency Plan to the Nuclear Regulatory Commission (NRC). Three of the changes were editorial in nature while three others involved formatting. One of the changes involved updating a drawing on the reconfiguration of the fencing near the Security and Operations Building. Another change allowed the use of flammable/combustible liquids within ten feet of the vertical concrete casks for ISFSI operations or maintenance. The other change eliminated the radiological information from the list of pre-scripted information initially communicated to the Maine State Police and the NRC in an Unusual Event.

Environmental

Although air filters are collected on a biweekly basis from the roof of the Health and Environmental Testing Laboratory, they are not analyzed until the end of each calendar quarter.

Maine Yankee Decommissioning

The preliminary draft of the Confirmatory Summary Report detailing the State's involvement and independent findings is about 95% completed.

Groundwater Monitoring Program

There is nothing to report on the radiological groundwater monitoring program.

Other Newsworthy Items

1. On February 1st -2nd the Blue Ribbon Commission on America's Nuclear Future held a meeting in Washington, D.C. The venue included three roundtable discussions on key questions raised during Commission hearings. The panels will focus on establishing an environmentally, politically, and socially legitimate facility siting process, the organization and scope of the governing body managing the nation's nuclear waste, and financial consideration issues. A copy of the agenda is attached.

² Dose is a general term denoting the quantity of radiation energy deposited in the human body multiplied by a quality factor that depends on the different types of radiation absorbed in the body.

³ Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For more information, refer to the glossary on the Radiation Program's website.

2. On February 1st the petitioners from Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford site in Washington filed with the U.S. Court of Appeals for the District of Columbia a motion to submit a supplemental joint appendix and revised addenda before the Court. The petitioners consulted with the respondents (the President, Energy Secretary Chu, the Department of Energy, and the Nuclear Regulatory Commission) in the case and the respondents do not oppose the petitioners' submission.
3. On February 3rd the Nuclear Waste Strategy Coalition held its bi-monthly conference call to provide an update to the ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members on the withdrawal status of the Yucca license application with the Nuclear Regulatory Commission and the U.S. Court of Appeals, an update of the litigation on the Nuclear Waste Fund fee, congressional budget activities with the continuing resolution for FY 2011, and the recent Blue Ribbon Commission meetings in New Mexico and Washington, D.C.
4. On February 4th the Blue Ribbon Commission on America's Nuclear Future held a closed meeting. Due to national security considerations the discussions and minutes of the meeting are not available for public disclosure.
5. On February 4th the Nuclear Energy Institute filed with the U.S. Court of Appeals for the District of Columbia their final amicus brief in support of the petitioners (Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford site in Washington, including intervenor-petitioner National Association of Regulatory Utility Commissioners) lawsuit against the federal government's actions on the Yucca Mountain license application.
6. On February 8th Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford Site in Washington filed with the U.S. Court of Appeals for the District of Columbia their reply brief explaining the reasons that the federal government must abide by the Nuclear Waste Policy Act (NWPA). On the same day the petitioners also filed with the Court its brief requesting it to order the Nuclear Regulatory Commission to comply with the NWPA and continue its license proceedings on the Yucca Mountain license application.
7. On February 8th the federal government filed with the U.S. Court of Appeals for the District of Columbia its motion to correct their addendum submitted to the Court on January 3rd to add statutes and regulations to its January 3rd proof brief. The motion was unopposed by the petitioners.
8. On February 8th the State of Nevada filed with the U.S. Court of Appeals for the District of Columbia its final brief supporting the federal government's actions for shutting down the Yucca Mountain Project. On the same day Nevada also filed with the Court a supplemental appendix of supporting documentation to its final brief.
9. On February 8th the counsels representing the Department of Energy, the Nuclear Regulatory Commission, Energy Secretary Chu and the President filed with the U.S. Court of Appeals for the District of Columbia their final brief in preparation for the Court's scheduled March 22nd date for oral arguments on the Yucca Mountain license proceedings.
10. On February 9th the Sustainable Fuel Cycle Task Force sent a letter to Dr. Holdren, Assistant to the President for Science and Technology and Director of the Office of Science Technology Policy. The letter takes issue with the President's March 9, 2009 memorandum on "the preservation and

promotion of scientific integrity” and Dr. Holdren’s December 17, 2010 memorandum on scientific integrity and their applicability to the Yucca Mountain repository program. A copy of their letter is attached. A nearly identical declaration on their Nuclear Waste Management and Scientific Integrity Statement is available under January’s monthly report. The updated version highlights that five of the nine affected counties in Nevada support Yucca Mountain, especially Nye County in which Yucca Mountain is located.

11. On February 8th Aiken County, South Carolina, the states of Washington and South Carolina, the business leaders from the Tri-City area near the Hanford site in Washington, and the petitioner-intervenor the National Association of Regulatory Utility Commissioners filed with the U.S. Court of Appeals for the District of Columbia both their revised addendum to their brief and reply brief in preparation for the Court’s March 22nd date for oral arguments on the Yucca Mountain license proceedings.
12. On February 10th the U.S. Court of Appeals for the District of Columbia ordered the petitioners’ (Aiken County, South Carolina, et al.,) February 1st motion to include a supplemental joint appendix and revised addenda.
13. On February 10th the Chair and Vice-Chair of the House of Representatives Committee on Science, Space and Technology, the Chair of the Subcommittee on Investigations and Oversight and the Chair of the Subcommittee on Energy and Environment sent a letter to the Chairman of the Nuclear Regulatory Commission (NRC), Dr. Jaczko, requesting in a spirit of openness the un-redacted version of the NRC’s Volume III of the Safety Evaluation Report on Yucca Mountain. A copy of their letter is attached.
14. On February 11th Energy Secretary Chu sent a letter to the Co-Chairs of the President’s Blue Ribbon Commission (BRC) on America’s Nuclear Future reinforcing and clarifying the initial guidance that he provided to the Commission. Dr. Chu emphasized that the BRC role is not to be a siting commission to counter some recent public presentations discussing specific sites and to ensure that the BRC will not include limited recommendations on Yucca Mountain. A copy of the letter is attached.
15. On February 14th the states of New York, Connecticut and Vermont filed a lawsuit with the U.S. Court of Appeals for the District of Columbia against the Nuclear Regulatory Commission’s temporary storage rule for spent nuclear fuel and waste confidence rule that were issued on December 23, 2010. Both rules extend the storage of used nuclear fuel at reactor sites to 120 years. The states contend that in promulgating these rules it violated numerous rules including the National Environmental Policy Act, the Administrative Procedures Act, and the Atomic Energy Act. The states argue that the NRC needs to perform environmental impact studies before extending the storage rule. A copy of the court filing is attached.
16. On February 14th the U.S. Chamber of Commerce issued a Key Vote Alert on the House of Representatives H.R. 1, the “Full Year Continuing Appropriations Act” emphasizing strong support for Section 1419 of the bill which would restrict the Nuclear Regulatory Commission’s ability on terminating the Yucca Mountain Project until the Commission overrules its Atomic Safety and Licensing Board’s decision to deny the Department of Energy’s motion to withdraw its Yucca Mountain license application. A copy of the alert is attached.
17. On February 16th the U.S. Nuclear Waste Technical Review Board held a meeting in Las Vegas to consider technical lessons that can be gained from the Department of Energy’s efforts to develop a permanent repository for spent fuel and high-level radioactive waste over the last two decades. The

Board will also review presentations on geologic disposal options for used nuclear fuel including deep borehole disposal. A copy of their agenda is attached.

18. On February 16th the National Association of Regulatory Utility Commissioners issued a resolution calling for the federal government to honor its obligations under the Nuclear Waste Policy Act (NWPA) and that storage of spent nuclear fuel at reactor sites up to 100 years is inconsistent with the NWPA. A copy of the resolution is attached.
19. On February 17th the Natural Resources Defense Council (NRDC) filed with the U.S. Court of Appeals for the District of Columbia a lawsuit against the Nuclear Regulatory Commission (NRC) challenging the NRC's Waste Confidence and Temporary Storage Rules. The NRDC contends that the rules violate the National Environmental Policy Act, the Administrative Procedures Act and the Atomic Energy Act.
20. On February 18th the Department of Energy (DOE) issued a draft Environmental Impact Statement (EIS) for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste. The EIS evaluated several disposal options such as a deep geological repository, intermediate depth boreholes, enhanced near surface trenches, and above grade vaults. Several disposal locations were analyzed including the Waste Isolation Pilot Project and the Los Alamos National Laboratory in New Mexico, the Savannah River Site in South Carolina, the Hanford Site in Washington, the Idaho National Laboratory, the Nevada Test Site, and four commercial disposal sites in the U.S. The DOE did not identify a preferred disposal alternative or location. A Federal Register Notice was published on February 25th starting a 120 day public comment period on the draft EIS. (Editorial Note: Maine Yankee has four concrete casks with GTCC wastes from the cut-up of the reactor internals at their storage installation in Wiscasset.)
21. On February 18th the Blue Ridge Environmental Defense League, Riverkeeper, Inc. and the Southern Alliance for Clean Energy filed a joint lawsuit against the Nuclear Regulatory Commission (NRC) and the United States of America. The petitioners contend that the Waste Confidence Update and the Temporary Storage Rule published by the NRC violate the Atomic Energy Act, the National Environmental Policy Act, and the Administrative Procedures Act. The petitioners are requesting the Court to reverse the NRC rules.
22. On February 22nd the Nuclear Regulatory Commission (NRC) Staff filed with the NRC's Atomic Safety and Licensing Board its certification of no additional witnesses to its Phase I National Environmental Protection Act contentions.
23. On February 23rd the Nuclear Waste Strategy Coalition (NWSC) held its second bi-monthly conference call to provide an update on the Department of Energy's withdrawal status of the Yucca license application with the Nuclear Regulatory Commission and the U.S. Court of Appeals, an update of the litigation on the Nuclear Waste Fund fees, current activities of the Blue Ribbon Commission, the litigation from states on the Nuclear Regulatory Commission's (NRC) waste confidence rule, the redacted form of the NRC's Safety Evaluation Report, Volume III on the Yucca Mountain geologic repository, congressional budget activities for FY 2011 and FY 2012. The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 47 organizations from 31 states.
24. On February 23rd the petitioners from Aiken County, South Carolina, the states of Washington and South Carolina, the business leaders from the Tri-City area near the Hanford site in Washington, and the intervenor-petitioner - National Association of Regulatory Utility Commissioners, filed with the U.S. Court of Appeals for the District of Columbia a proposed format for the presentation of the

petitioners' oral arguments scheduled for March 22nd. The counsels representing the federal government took no position on the petitioners' motion.

25. On February 23rd the State of Nevada and White Pine County in Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) their notifications of no additional witnesses to the Yucca Mountain license proceedings. On the same day the State of Nevada also filed with the ASLB its sixth notification of no additional party witnesses to its Phase I discovery list.
26. On February 24th the Chair of the House's Committee on Energy and Commerce and the Chair of the Subcommittee on Environment and Economy co-signed a letter sent to Energy Secretary Chu requesting a response to six questions they posed. The Chairs expressed their fiduciary responsibility to consumers paying into the Nuclear Waste Fund while "receiving nothing in return" and a "moral obligation to stop the flow of taxpayer dollars from the U.S. Treasury" due to the Department of Energy's "failure to meet its obligations". A copy of their letter is attached.
27. On February 25th Clark County, Nevada and the Joint Timbisha Shoshone Tribal Group filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board both their certifications of no additional party and other witnesses to the Yucca Mountain license proceedings.
28. On February 25th the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB) issued an Order denying the Department of Energy's motion to renew the temporary suspension of the proceedings associated with the Yucca Mountain license application. On the same day the ASLB issued another Order directing the NRC Staff to show cause why it should not provide the unredacted version of their Safety Evaluation Report, Volume III on Yucca Mountain. Copies of both Orders are attached.
29. On February 27th Inyo County, California filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board both fifth certifications of no additional party and no other witnesses to the Yucca Mountain proceedings.
30. On February 28th Aiken County, South Carolina, the states of Washington and South Carolina, and the business leaders from the Tri-City area near the Hanford Site in Washington filed with the U.S. Court of Appeals for the District of Columbia an amended motion for the Court to consider on the format for the oral arguments set for March 22nd. The federal government had no position on the petitioners' motion.

**Blue Ribbon Commission on America's Nuclear Future
Agenda**

February 1-2, 2011

**Marriott Metro Center
775 12th Street NW
Washington, DC**

Tuesday, February 1, 2011

- | | | |
|-----------|--|---|
| 9:00 a.m. | Open meeting/review agenda | Tim Frazier, DOE DFO |
| 9:05 a.m. | Opening remarks | Honorable Lee Hamilton
General Brent Scowcroft
Commission members |
| 9:15 a.m. | Roundtable discussion – establishing an environmentally and politically acceptable and socially legitimate facility siting process | |

The roundtable participants will help the Commission explore key questions on facility siting that have been raised during Commission hearings, including:

- When should the process of developing a disposal system begin, and what are the key factors affecting that decision (e.g. cost, ethical considerations)?
- What types of siting process models should the Commission consider?
- Would an adaptive staged approach build or undermine social acceptance of the disposal system development process?
- What stages might an adaptive staged process entail?
- Are there alternate approaches the Commission should consider that would lead to greater social legitimacy while still providing the necessary protection of people and the environment?
- Is it appropriate to impose any sort of schedule on development of repositories, or is an open-ended approach preferable? What factors should be considered in making this decision?
- What is the relative importance of actually disposing of the wastes compared to developing and demonstrating the capability for such disposal?

- What institutional process should be used for selecting and licensing storage and disposal facility sites (considering the role of Congress, state, tribal and local governments, etc.)?
- What should be the roles of states, counties, tribes, and communities?
- What can we learn from past experiences in establishing storage and waste disposal sites and other controversial facilities in the U.S. and elsewhere?
- Should the U.S. seek multiple storage and disposal sites in parallel?
- At what level of detail should the Commission make recommendations? To what degree should we preserve flexibility for the new implementing organization?

Participants:

Dr. Eugene Rosa, Edward R. Meyer Distinguished Professor of Natural Resource and Environmental Policy, Thomas S. Foley Institute of Public Policy and Public Service, Washington State University

Dr. Tom Webler, Research Fellow, Social and Environmental Research Institute

Rick Moore, former Director, Industrial Siting Administration, State of Wyoming

Dr. Markku Lehtonen, Research Fellow, Sussex Energy Group, University of Sussex

11:30 a.m.

Lunch

2:00 p.m.

Roundtable discussion - Organization and scope of the nation's nuclear waste management entity

The roundtable participants will help the Commission explore key questions on nuclear waste program governance that have been raised during Commission hearings, including:

- What are the key tasks that need to be performed by the entity or entities responsible for long-term storage and disposal of used fuel and high-level wastes?
- What are the guiding principles and organizational values that should shape the ways in which the entity(ies) carry out its mission?
- What form of organizational structure is best suited to carry out those tasks consistent with the guiding principles and organizational values?
- Where should such an entity be housed (e.g. within a government agency, as a single-purpose government agency, as a quasi-

government organization, public-private partnership, or in the private sector)?

- How should the members of the governing body of the entity (if it has a board rather than a single CEO) be selected and under what criteria?
- Do organizational models and examples exist that the Commission should examine in making its recommendations?
- What form of oversight should the entity be subject to? – including Congressional control and guidance, regulatory requirements and third-party oversight

Participants:

John Koskinen, Non-Executive Chairman, Freddie Mac; former Deputy Director for Management, Office of Management and Budget; and former Chair, President's Council on Year 2000 Conversion
George Dials, Executive Vice President, B&W Technical Services Group; former Director, DOE Carlsbad Field Office; former President, TRW Parsons

Liz Dowdeswell, President, Council of Canadian Academies and former President, Nuclear Waste Management Organization (Canada)

Phil Sewell, Senior Vice President, American Centrifuge and Russian HEU, USEC

Dr. Tom Cotton, Vice President, Complex Systems Group and Senior Consultant to the Blue Ribbon Commission; former professional staff member, Office of Technology Assessment

4:00 p.m. Adjourn

Wednesday, February 2, 2011

8:30 a.m. Open meeting/review agenda Tim Frazier, DOE DFO

8:45 a.m. Roundtable discussion – Financial considerations

The roundtable participants will help the Commission explore key questions on funding nuclear waste management in the US that have been raised during Commission hearings, including:

- What is the current and projected future federal liability related to the inability to accept used commercial fuel?
- How much is the government spending to store used fuel and nuclear waste awaiting geologic disposal?

- How can the U.S. nuclear waste program be provided the level of financial assurance necessary to carry out the program?
- What types of arrangements might be acceptable to Congress and the Administration?
- What steps can the executive branch take administratively, without requiring legislation?

Participants:

Joe Hezir, Vice President, EOP Group

Michael Hertz, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice

Elgie Holstein, Senior Director for Strategic Planning, Environmental Defense Fund; former DOE Chief of Staff; former Associate Director of Natural Resources, Energy and Science, OMB

Dr. Mike Telson, Vice President – General Atomics and former DOE Chief Financial Officer

Kevin Cook, former Clerk, Energy and Water Development Appropriations Subcommittee, U.S. House of Representatives

10:00 a.m.	Coffee break	
10:15 a.m.	Continue roundtable discussion	
11:15 a.m.	Oral statements	Public
12:15 p.m.	Adjourn meeting	



Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

Sustainable Fuel Cycle Task Force Science Panel

February 9, 2011

Dr. John P. Holdren, Ph.D.
Assistant to the President
for Science and Technology
Director of the Office of Science Technology Policy
1725 17th Street, NW, Room 5230
Washington, DC 20502

Dear Dr. Holdren:

As the federal government moves into 2011 in a continuing resolution, actions taken by the Administration have brought to a standstill all scientific work related to solving the United States' program of high-level radioactive waste and spent nuclear fuel disposal.

No viable alternative solution has been brought forward, let alone authorized by Congress, as a replacement for their directive of July 23, 2002, in Public Law 107-200, approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste policy Act of 1982.

There is no scientific reason for this situation; in fact the scientific soundness of the selection of Yucca Mountain was well on its way to being independently confirmed by the Nuclear Regulatory Commission (NRC) when the Administration stopped the program. Credible scientific support for the project is found throughout the community of knowledgeable scientists and engineers.

On December 17, 2010, you issued an important memorandum on scientific integrity. Your memorandum responded to a March 9, 2009 memorandum issued by President Obama articulating principles central to the preservation and promotion of scientific integrity. As Director of the Office of Science and Technology Policy, your office is responsible for ensuring the highest level of integrity in all aspects of the Executive Branches involved with scientific and technical processes.

We find that there is a conspicuous inconsistency between the intent of your memorandum and the DOE's and NRC's actions in suspending activities related to the licensing of Yucca Mountain.

Today, while the legislatively mandated license application sits in limbo, no technical authority has concluded either that Yucca Mountain is not suitable for a repository, or that the science supporting the license application is not sound. There are no published analyses done in conformance with the applicable requirements and standards that show that the Yucca Mountain site would not meet the safety standards. Statements purporting that the Yucca Mountain site does not meet the safety standards are found to be either not supported by analyses that conform to the regulations, or are based on selected portions of outdated analyses that are not consistent with the current requirements.



Sustainable Fuel Cycle

TASK FORCE

www.sustainablefuelcycle.com

Dr. John P. Holdren, Ph.D.
Assistant to the President
for Science and Technology
Director of the Office of Science Technology Policy
February 9, 2011
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Moreover, presentations to the Blue Ribbon Commission, empanelled by the Secretary to articulate the “better way to deal with the wastes,” have revealed nothing new. This is not surprising, as the country debated the merits of alternative means of disposal of the wastes for decades before embarking on the path forward legislated by the Nuclear Waste Policy Act. Even the reprocessing options being studied today do not lead to a complete solution. Evaluations have shown that legacy wastes likely will not be reprocessed and will require repository disposal. All known advanced technology options have some residual high level radioactive waste. High-level radioactive wastes have no disposal path other than a repository.

Your memorandum also requires agencies to develop a culture of scientific integrity, and strengthen the actual and perceived credibility of government research. What better way is there to demonstrate these principles than to let the process move forward as Congress intended to happen? The NRC staff should be directed to issue the Safety Evaluation Report on post closure safety of Yucca Mountain. This would ensure that, as your memorandum directs, “data and research used to support policy decisions undergo independent peer review by qualified experts where feasible and appropriate and consistent with law.” It would also facilitate the free flow of scientific and technological information, another tenet of your memorandum.

A way must be found to restart the Yucca Mountain licensing process. A Congressionally directed solution is in place, and science, not just politics, should determine whether or not a license to construct a repository at Yucca Mountain is appropriate. State governors and other state and local elected officials perceive that without a repository, wastes now in 39 states could remain there indefinitely. Furthermore, without a repository, interim storage alone is likely to falter as it has each time it has been proposed in the past. There is nothing to indicate that state opposition to repository development would not be expected if the country sought another repository site.

There are, however, indications that local communities may be willing participants. In particular, Nye County, Nevada, has gone on record indicating its acceptance of the role assigned to it when Congress selected Yucca Mountain for repository development. In fact, five of the nine Nevada Counties identified as affected units of government, have opposed the DOE withdrawal of the Yucca Mountain License Application in submittals to the NRC Atomic Safety Licensing Board,



Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

Dr. John P. Holdren, Ph.D.
Assistant to the President
for Science and Technology
Director of the Office of Science Technology Policy
February 9, 2011
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For your information, please find attached a complete copy of our statement on Nuclear Waste Management and Scientific Integrity.

The Science Panel of the Sustainable Fuel Cycle Task Force was created to provide independent science based perspectives on issues related to a sustainable nuclear fuel cycle, and offers its services as a source of scientific information about all waste management technical and licensing issues, including Yucca Mountain. If we can be of assistance, please do not hesitate to contact us.

Sincerely,
Science Panel

Isaac Winograd

Isaac Winograd, Ph.D.

Wendell D. Weart

Wendell Weart, Ph.D.

Eugene H. Roseboom Jr

Eugene H. Roseboom Jr., Ph.D.

Charles Fairhurst

Charles Fairhurst, Ph.D.

D. Warner North

D. Warner North Ph.D.

Cc:

Chairman Jaczko, Chairman, US Nuclear Regulatory Commission
Kristine L. Svinicki, U.S. Nuclear Regulatory Commission Commissioner
George Apostolakis, U.S. Nuclear Regulatory Commission Commissioner
William D. Magwood, IV, U.S. Nuclear Regulatory Commission Commissioner
William C. Ostendorff, U.S. Nuclear Regulatory Commission
R. William Borchardt, Executive Director of Operations, U.S. Nuclear Regulatory Commission
James Dyer, Chief Financial Officer, U.S. Nuclear Regulatory Commission

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

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20516-6301
(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).

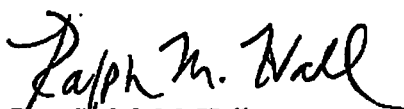
The Honorable Jaczko
February 10, 2011
Page two

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

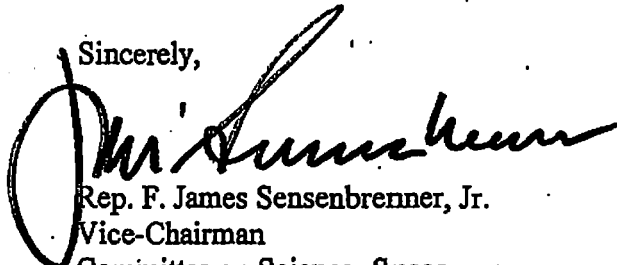
Disturbingly, however, in October 2010, you directed commission staff to halt all activities on the High Level Waste Program. This unilateral political decision appears to form the basis for the NRC's refusal to release SER Volume III. It shouldn't. Such actions are wholly inconsistent with the President's 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.

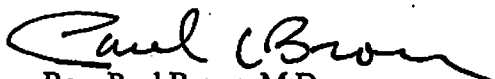
Accordingly, we request the Commission immediately publicly release Volume III of the SER. Further, provide to the Committee all documents (as defined by the attachment) related to the SER release, as well as an update on the current status of the remaining volumes by February 24, 2011. Should you have 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

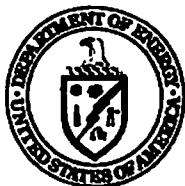


Rep. Andy Harris
Chairman
Subcommittee on Energy and Environment
Committee on Science, Space,
and Technology

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.



The Secretary of Energy
Washington, DC 20585

February 11, 2011

The Honorable Lee Hamilton, Co-Chair
The Honorable Brent Scowcroft, Co-Chair
Blue Ribbon Commission on America's Nuclear Future
1000 Independence Avenue, SW
Washington, DC 20585

Dear Co-Chairs Hamilton and Scowcroft:

The Obama Administration believes that nuclear energy has an important role to play as America moves to a clean energy future. One of my goals as Secretary of Energy is to help restart America's nuclear industry, creating thousands of new jobs and new export opportunities for the United States while producing the carbon free energy we need to power America's economy.

Last year, the Administration announced a loan guarantee for what will become the first new nuclear power plant to begin construction in three decades and, with the existing and additional loan guarantee authority requested by the Administration, we could see six to nine reactors built in the United States. The Department has also launched a new Energy Innovation Hub to use one of the world's fastest supercomputers to accelerate upgrades to our existing reactor fleet and speed the development of next generation nuclear reactors.

As part of the Administration's effort to restart the nuclear industry, we are strongly committed to meeting the Nation's obligation for the safe, secure long-term disposal of used nuclear fuel and nuclear waste. That is why we brought together a highly respected panel of experts to make recommendations about the best approaches to dealing with the challenges of the back end of the nuclear fuel cycle.

As you know, the Blue Ribbon Commission is not intended to be a siting commission; instead, the Commission is taking a broad and long overdue look at America's approach to dealing with the nuclear fuel cycle and making recommendations on a better path forward. In the meantime, the Nuclear Regulatory Commission recently affirmed that on-site, dry cask storage of used nuclear fuel is safe for at least 60 years after a nuclear plant has been retired.

Nuclear power plants run for decades – many have had life extensions of up to 60 years authorized – while some isotopes in the used nuclear fuel rods will remain radioactive for millennia. Therefore, any workable policy to address the final disposition of used fuel and nuclear waste must be based not only on sound scientific analysis of the relevant geologies and containment mechanisms, but also on achieving consensus, including the



communities directly affected. It has been clear for many years that Yucca Mountain did not enjoy that kind of consensus. To the contrary, the Yucca project produced years of continued acrimony, dispute, and uncertainty. This conflict may have been inevitable from the beginning, when Yucca Mountain was selected by Congress in legislation that was not embraced by the state and community selected to host the geologic repository.

The only way to open the path toward a successful nuclear future for the United States was to turn the page and look for a better solution – one that is not only scientifically sound but that also can achieve a greater level of public acceptance than would have been possible at Yucca Mountain. It is time to move beyond the 25 year old stalemate over Yucca Mountain – especially since technology has advanced significantly during that time, giving us better options both in terms of science and public acceptance.

In establishing its charter, I asked the Blue Ribbon 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." It was an intentionally broad mandate, but one that specifically addressed the manner of making a decision of such consequence. For example, the charter asked the Commission to provide "options for decision-making processes for management and disposal that are flexible, adaptive, and responsive" as well as "options to ensure that decisions on management of used nuclear fuel and nuclear waste are open and transparent, with broad participation."

For these reasons, it is time for the Commission, the Congress, and the American people to move toward a better, more widely-supported, solution.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Chu". The signature is written in a cursive, flowing style.

Steven Chu

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

-----x
THE STATE OF NEW YORK,
THE STATE OF VERMONT, and
THE STATE OF CONNECTICUT,

Petitioners,

-against-

No. 11-_____ -ag

UNITED STATES NUCLEAR
REGULATORY COMMISSION, and
UNITED STATES OF AMERICA,

Respondents.

-----x

**PETITION FOR JUDICIAL REVIEW OF
ADMINISTRATIVE AGENCY ACTION**

Pursuant to § 189 of the Atomic Energy Act, 42 U.S.C.
§ 2239, 28 U.S.C. §§ 2341-2344; the Administrative Procedure Act,
5 U.S.C. § 551 *et seq.*; and Rule 15 of the Federal Rules of
Appellate Procedure, the petitioners, the State of New York, by its
attorney, Eric T. Schneiderman, Attorney General of the State of
New York; the State of Vermont, by its attorney, William H.
Sorrell, Attorney General of the State of Vermont; and the State of

Connecticut, by its attorney, George Jepsen, Attorney General of the State of Connecticut, hereby petition this Court for review of the United States Nuclear Regulatory Commission's ("NRC") Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation rule ("Temporary Storage Rule") and affiliated Waste Confidence Decision Update, both issued December 23, 2010. *See* 75 Fed. Reg. 80132 (Dec. 23, 2010); 75 Fed. Reg. 80137 (Dec. 23, 2010) (both attached to this petition). The NRC acted arbitrarily, abused its discretion, and violated the National Environmental Policy Act, the Administrative Procedure Act, the Atomic Energy Act, the Commission's policies and regulations, the Council on Environmental Quality's regulations, and other applicable laws and regulations in promulgating these rules and findings.

The State of New York, jointly with the State of Vermont and the Commonwealth of Massachusetts, and the State of Connecticut, through their respective Attorneys General, submitted extensive comments on both the draft Temporary Storage Rule and the draft Waste Confidence Decision Update in

February 2009. The State of New York also submitted supplemental comments on February 9, 2010. As the NRC published notice of these rules in the Federal Register on December 23, 2010, this filing is within the Hobbs Act's 60-day statute of limitations and is timely. 28 U.S.C. § 2344.

Venue is appropriate within the D.C. Circuit pursuant to 28 U.S.C. § 2343. Therefore, the States of New York, Vermont, and Connecticut respectfully request that this Court review the NRC's Temporary Storage Rule and Waste Confidence Decision Update, vacate both, and remand the matter to the NRC for further analysis and the preparation and issuance of an environmental impact statement, and grant any other relief that the Court may deem just and appropriate.

Dated: February 14, 2011
New York, New York

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

BY: _____/s_____
MONICA WAGNER
Assistant Solicitor General
JANICE A. DEAN
JOHN J. SIPOS
Assistant Attorneys General

Office of the Attorney General
For the State of New York
120 Broadway
New York, New York 10271
Tel. (212) 416-6351
E-mail:
monica.wagner@ag.ny.gov

**WILLIAM H. SORRELL
ATTORNEY GENERAL**

BY: _____/s_____
**THEA SCHWARTZ
KYLE H. LANDIS-MARINELLO**
Assistant Attorneys General
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Office of the Attorney General
109 State Street
Montpelier, Vermont
05609-1001
Tel. (802) 828-3186
Email: tschwartz@atg.state.vt.us

**GEORGE JEPSEN
ATTORNEY GENERAL**

BY: _____/s_____
ROBERT SNOOK
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106
Tel. (860) 808-5020
robert.snook@ct.gov

ATTACHMENT

U.S. Nuclear Regulatory Commission

**Consideration of Environmental Impacts of Temporary Storage of
Spent Fuel After Cessation of Reactor Operation rule
and
Waste Confidence Decision Update**

issued December 23, 2010

**75 Fed. Reg. 80132-37 (Dec. 23, 2010);
75 Fed. Reg. 80137-76 (Dec. 23, 2010)**

KEY VOTE ALERT!



Congressional & Public Affairs
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C.
20062-2000

202/463-5600

February 14, 2011

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports several provisions of H.R. 1, the "Full-Year Continuing Appropriations Act, 2011," which would implement important policy changes at various federal agencies. Moreover, the Chamber believes that the policy-related components of H.R. 1 could be improved by addressing other policy issues.

Specifically, the Chamber strongly supports existing provisions of H.R. 1, including:

- Section 1746, which would limit the ability of the Environmental Protection Agency (EPA) to regulate greenhouse gas emissions under the Clean Air Act. By actively moving forward with regulation of stationary greenhouse gas emitters, EPA has assumed the role of legislator and is infringing on responsibilities of Congress. EPA's actions have caused tremendous regulatory uncertainty for businesses, many of whom are afraid to invest in a project that, on account of its greenhouse gas emissions, might not receive a permit. There is broad consensus that the Clean Air Act is not an appropriate tool for addressing climate change. These provisions would help limit the damage EPA's regulatory overreach has caused.
- Section 1747, which would prohibit EPA from expanding the jurisdiction of the Clean Water Act (CWA) to waters the law was never intended to cover. Ignoring the fact that recent Congresses have failed to take action on legislation to expand the scope of the law by expanding the CWA's jurisdiction from "navigable waters of the United States" to all "waters of the United States," EPA has sought to implement a change in scope of the existing law through the regulatory process. In mid-2010, EPA declared the concrete-lined Los Angeles River—of *Grease* and *Terminator 2* car chase fame—to be "navigable." In coming weeks, EPA plans to release guidance further stretching its regulatory reach. Section 1747 is a sensible provision to limit the damage such a radical reinterpretation of the CWA could cause.
- Section 1419, which would limit the Nuclear Regulatory Commission's (NRC) ability to take any further action related to closure of the Yucca Mountain geologic repository until it reverses the pending Atomic Safety

Licensing Board's finding that the Department of Energy has no legal mechanism to withdraw its license application. The NRC has delayed its decision for more than seven months without providing a legal explanation. This inaction calls into question the Commission's integrity and creates greater uncertainty as to how the federal government will meet its legal obligation to collect and manage the tens of thousands of metric tons of commercial and defense waste stored in 39 states.

In addition, the Chamber urges you to include additional provisions to implement important policy changes. The Chamber would support amendments, if offered, to:

- Prevent the Department of Education from using any funds to implement the proposed gainful employment regulation. Such an amendment, which may be offered by Education and Workforce Committee Chairman Kline, would prevent the significant impact of the gainful employment rule: a chilling effect on students' access to post-secondary education, an estimated 100,000 jobs lost, and a \$5.3 billion burden on taxpayers.
- To limit funding for the National Labor Relations Board to prevent the Board from modifying the standard it uses to determine what constitutes an appropriate bargaining unit for union organizing and collective bargaining. The Board is considering significant changes to its policy in this area in the case *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, 356 NLRB No. 56 (Dec. 22, 2010). Although there is no evidence that existing policy has proven problematic, the Board is considering creating a new rule that would lead to the proliferation of fragmented and micro-units that unions could use to force their way in to an employer's business.
- To improve accountability congressional oversight of the Bureau of Consumer Financial Protection (BCFP) by ensuring that this Bureau, which was created in the recently enacted Dodd-Frank law, would be funded through the traditional appropriations process. Pursuant to Dodd-Frank, BCFP is funded with a virtually unconstrained appropriation. It is imperative that Congress assert its traditional oversight role to ensure that BCFP is accountable and is operating in an efficient and effective manner, and an amendment on this issue is expected to be offered by Rep. Garrett.

The Chamber will consider including votes on, or in relation to, these important policy issues—including votes on amendments—in our annual *How They Voted* scorecard.

Sincerely,



R. Bruce Josten



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
2300 Clarendon Boulevard, Suite 1300
Arlington, VA 22201

AGENDA
Winter Meeting
Wednesday, February 16, 2011
Marriott Suites Convention Center
325 Convention Center Drive
Las Vegas, NV 89109
(T) (702)-650-2000 (F) (702)-650-9466
Lake Mead/Red Rock Salons (17th floor)

- 8:30 a.m.** **Call to Order and Introductory Statement**
B. John Garrick, Chairman
U.S. Nuclear Waste Technical Review Board
- 8:45 a.m.** **Update on the Fuel-Cycle Technology Activities of the**
U.S. Department of Energy's Office of Nuclear Energy (DOE-NE)
Monica C. Regalbuto, Deputy Assistant Secretary for Fuel Cycle
Technologies
DOE-NE
- 9:15 a.m.* *Questions and Discussion*
- 9:30 a.m.** **Update on DOE's Research and Development Activities for Used**
Nuclear Fuel Disposition: Storage, Transportation, and Disposal
William J. Boyle, Director
Office of Used Nuclear Fuel Disposition Research and Development
DOE-NE
- 10:00 a.m.* *Questions and Discussion*
- 10:15 a.m.** **BREAK (15 minutes)**
- 10:30 a.m.** **Panel on Technical Experience Gained from DOE's Spent Nuclear Fuel**
and High-Level Radioactive Waste Management Efforts, to Date.
Moderator: B. John Garrick, NWTRB Chairman
- Panelists:**
Lake H. Barrett, Independent Consultant
Former Acting Director, DOE Office of Civilian Radioactive Waste
Management (DOE-RW) (1993, 1996 - 1999, 2000 - 2002)

**George E. Dials, Executive Vice President
B&W Technical Services Group
Former President and General Manager of TRW Environmental Safety
Systems, Inc., (Management and Operating Contractor for the DOE Yucca
Mountain Project) (1999 – 2001); and Manager of the DOE Carlsbad Area
Office with responsibility for managing the WIPP Project (1993 – 1998)**

**Christopher A. Kouts, Independent Consultant
Former Acting Director of DOE-RW (2009 - 2010)**

**John W. Bartlett, Independent Consultant, Retired (Invited)
Former Director, DOE-RW (1990-1993)**

Each panel member has been invited to make an opening presentation and to address the following questions:

- 1. What technical advances were made during the development of the Yucca Mountain program that would be applicable in developing future programs for management of spent nuclear fuel and high-level waste in the United States?**
- 2. What scientific research, or technical development work, should be undertaken now, or in the near term, to support future development of a repository for disposal of spent nuclear fuel and high-level waste?**
- 3. How did different managerial approaches and changes in management approaches during the development of the Yucca Mountain program influence the technical design, planned operations and logistics?**
- 4. What actions were taken to build public trust and confidence in scientific and technical activities and results? Which of these actions should be repeated for future repository programs and which should not? What, if anything, could have been done better?**

**11:30 a.m. Discussion on Technical Experience Gained
Board and Panel members**

12:30 p.m. LUNCH (1 hour 15 minutes)

**1:45 p.m. Electric Power Research Institute (EPRI) Review of Geologic Disposal
Options for Used Fuel and High-Level Radioactive Waste – Lessons
Learned
Andrew G. Sowder, Senior Project Manager
Used Fuel and High-Level Radioactive Waste Management
EPRI**

2:15 p.m. *Questions and Discussion*

2:30 p.m. **Deep Borehole Disposal: *Technical Concept and Performance Assessment Summary***

Patrick V. Brady, Senior Scientist
Sandia National Laboratories (SNL)

Deep Borehole Disposal: *Programmatic Benefits and Pilot Demonstration Path Forward*

S. Andrew Orrell, Director
Nuclear Energy & Fuel Cycle Programs
SNL

3:00 p.m. *Questions and Discussion*

3:15 p.m. **BREAK (15 minutes)**

3:30 p.m. **Panel on Geologic Disposal Options**
Moderator: Andrew Kadak, NWTRB Member

Panelists:

Ernest L. Hardin, Principal Member of the Technical Staff
Nuclear Fuel Cycle System Engineering & Integration Department
SNL

S. Andrew Orrell, Director of Nuclear Energy & Fuel Cycle Programs
SNL

Hank C. Jenkins-Smith, Professor of Political Science
University of Oklahoma

Ernest Hardin will discuss issues raised in the recent SNL Report on this subject (*Geologic Disposal Options in the USA*) and technical aspects of identifying suitable geologic media for a geologic repository. Andrew Orrell will join the discussion. Hank Jenkins-Smith will discuss public acceptance issues related to the process for identifying a geographic location for a repository.

4:15 pm. **Discussion on Geologic Disposal Options**
Board and Panel Members

5:00 p.m. **Public Comments**

5:30 p.m. **Adjourn**

***Resolution Expressing Disagreement with the Opinions that Spent Nuclear
Fuel Should be Stored at Reactor Sites for 100 Years***

WHEREAS, The Nuclear Waste Policy Act (NWPA) of 1982 found that previous federal efforts to devise a permanent solution for the problem of civilian (and defense) radioactive waste disposal “have not been adequate;” *and*

WHEREAS, The NWPA set the policy direction of disposal in a geologic repository, later selected in 1987 and re-affirmed in 2002 to be at Yucca Mountain, Nevada; *and*

WHEREAS, President Obama has decided that building a repository at Yucca Mountain is “not a workable option” and has taken steps to cancel further development of that site, leaving no clear alternative disposal path for spent-or used-nuclear fuel now stored at 72 locations with active and decommissioned reactors; *and*

WHEREAS, A Blue Ribbon Commission on America’s Nuclear Future has been appointed at the President’s direction to review alternative waste management and disposal alternatives and recommend a new disposition strategy; *and*

WHEREAS, Several developments may have the unintended consequence of implying that spent-nuclear fuel should remain at reactor storage sites for an extended period of time:

- A. The Nuclear Regulatory Commission issued a revised Waste Confidence Rule that the Commission has confidence that spent-nuclear fuel can be safely stored at either reactor sites or offsite for at least 60 years beyond the licensed life of the reactor.
- B. A report on the Future of the Nuclear Fuel Cycle study by an MIT team stated that “long-term managed storage of spent-nuclear fuel ... is believed to be safe for about a century,” while recommending a “move toward” centralized storage.
- C. A member of the Blue Ribbon Commission at an early meeting said, “There is no crisis here,” suggesting that spent fuel can be safely stored where it is for decades;
- D. Several groups appearing before the Blue Ribbon Commission over the past year who oppose Yucca Mountain have called for spent fuel to remain at reactor sites; *and*

WHEREAS, Long-term storage at reactor sites may have validity from engineering and safety standpoints, but it overlooks the facts that the federal government has been found financially liable and an estimate of that liability was last calculated to be over \$16.2 billion and would grow by \$500 million for each additional year of delay past 2020; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Winter Committee Meetings in Washington, D.C., considers that continued storage at reactor sites for an indefinite period is not what was planned when the reactors were built and runs counter to the NWPA; *and be it further*

RESOLVED, That the federal government must honor its obligations under the NWPA to dispose of spent-nuclear fuel in a permanent repository at the earliest possible date consistent with laws and regulations; *and be it further*

RESOLVED, That NARUC leadership conveys its position to the Secretary of Energy, the NRC, and the Blue Ribbon Commission that storage of spent fuel at reactor sites for up to one hundred years is not consistent with the Nuclear Waste Policy Act.

*Sponsored by the Committees on Electricity and Energy Resources and the Environment
Adopted by the NARUC Board of Directors February 16, 2011*

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 24, 2011

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

Dear Mr. Secretary:

We in Congress have a duty to follow progress on the laws we write and to change them where improvement is needed. In the case of the Nuclear Waste Policy Act (the Act) we have extra obligations: a fiduciary duty to consumers who, under the Act, have paid billions of dollars into the Waste Fund only—so far—to receive nothing in return; and a moral obligation to stop the flow of taxpayer dollars from the U.S. Treasury to pay damages to plant operators whose contracts with the Department of Energy (the Department) to transfer possession of nuclear waste material are breached.

To help us carry out these duties, please respond to the following questions and requests for information within fourteen days of the date of this letter.

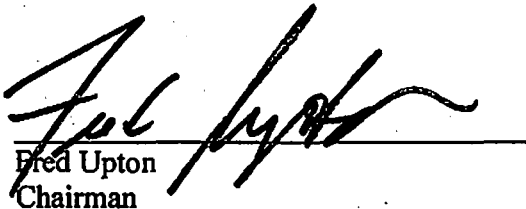
1. Do you agree that it is the responsibility of the United States Government, and the legal obligation of the Department of Energy, to take the steps necessary to accept nuclear waste from civilian generators?
2. Do you consider Yucca Mountain to be a geologically safe site for disposal of nuclear waste? After more than twenty years of the Department's work characterizing and preparing the site, and with a multi-agency record replete with validations that the site is geologically suitable for its statutory purpose, do you have information that it is not safe?
3. The Act directly establishes an Office of Civilian Radioactive Waste Management but you appear to have disbanded it. What is your specific legal authority to disband the Office in spite of its statutory establishment?

4. Do you agree that the Act requires the Department to file a license application for the Yucca Mountain Project? Do you understand that the duty to file, which was met by your predecessor, cannot continue to be met by withdrawing the application?
5. What is the total amount of damages in dollars paid to date to generating plant operators due to the Department's contractual failure to accept the high level waste?
6. What is the potential future legal and financial liability exposure for the U.S. if we have no Departmental facility to accept the waste? Please break down your projections by year. Please supply the Committee with all Departmental assessments and back-up analysis. Also, if you are aware of such assessments by any other office in the U.S. Government, or elsewhere, please list those.

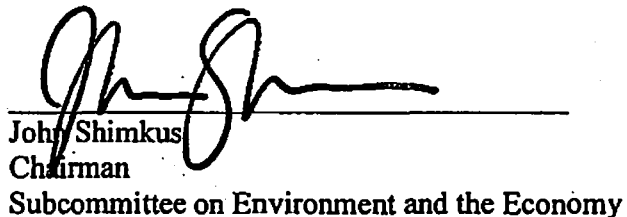
It would be difficult to draft legislation to make the Act more plain, specific, and mandatory than it already is. However, all three of these problems must be solved: the establishment of a permanent facility for accepting high level waste; the consumers paying out billions of dollars and receiving nothing in return; and the Treasury paying out billions of dollars in damages with no real end in sight due to the Department's failure to meet its obligations.

We appreciate your prompt attention to this request. Should you have any questions, you may contact David McCarthy of the Majority Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

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

MEMORANDUM AND ORDER

(Denying Motion to Renew Temporary Suspension of the Proceeding)

On January 21, 2011, the United States Department of Energy (DOE) moved to stay further proceedings before the Board through May 20, 2011, without prejudice to moving for additional stays.¹ Eureka County, Nevada and the Nuclear Energy Institute support DOE's motion.² Aiken County, South Carolina and Nye County, Nevada oppose the motion.³ The other parties either do not object or take no position.⁴

In support of its motion, DOE asserts that, after an earlier stay expired on June 29, 2010,⁵ the parties "have continued as though this proceeding were still suspended."⁶ According

¹ See U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 21, 2011) at 1 [hereinafter DOE Motion to Renew Stay].

² Id.

³ See Aiken County Response to U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 28, 2011) at 3.

⁴ DOE Motion to Renew Stay at 2.

⁵ See CAB Order (Granting Stay of Proceeding) (Feb. 16, 2010) (unpublished). The previous stay, which was entered without opposition, was in effect during the pendency of the Board's

to DOE, “[n]o party has requested to take any depositions in the six months since the suspension expired.”⁷ Rather, citing various uncertainties that might affect the future course of the proceeding, DOE asserts that “[a]ll parties appear to have implicitly understood that it makes little sense to devote scarce public and private resources to this proceeding until those uncertainties are resolved.”⁸ Moreover, DOE points out, “there is no looming discovery deadline or practical need to conduct discovery in the next 120 days.”⁹

DOE fails to demonstrate the threat of irreparable harm or any other reason for granting a stay.¹⁰ On the contrary, DOE’s request is not so much a motion to stay discovery—given that reportedly none is threatened or underway—as a request for the Board’s unqualified approval of the parties continued “collective inaction.”¹¹

The Board appreciates that the parties confront conflicting realities. On the one hand, although the Board has denied DOE’s motion to withdraw, continuation of the Yucca Mountain project remains subject to congressional funding and the possibility that our ruling might be reversed on appeal. Likewise, for reasons beyond the control of the Board or of most of the parties, there is currently no fixed deadline for the close of discovery and thus no hearing date. That is because, under Case Management Order #2, the current phase of discovery ends two

consideration of DOE’s motion to withdraw, and expired by its terms upon the Board’s June 29, 2010 order denying DOE’s motion. Id. at 1-2.

⁶ DOE Motion to Renew Stay at 2.

⁷ Id.

⁸ Id. at 3.

⁹ Id. at 6.

¹⁰ See U.S. Dep’t of Energy (High-Level Waste Repository: Pre-Application Matters), CLI-05-27, 62 NRC 715, 718 (2005).

¹¹ DOE Motion to Renew Stay at 3.

months after the NRC Staff issues Volume 3 of its Safety Evaluation Report (SER),¹² and the Staff has notified us that its schedule for that volume is indeterminate.¹³ On the other hand, when the Staff's SER becomes available, the Board intends to move this proceeding forward as expeditiously as circumstances permit.

Understandably, in the presently uncertain environment, the parties face difficult choices. Prudence and common sense may counsel careful allocation of resources. However, if the parties elect to abandon deposition discovery entirely, they should understand they do so at their own risk.

DOE's motion is therefore denied, without prejudice to the right of DOE or any other party to seek a stay or a protective order in the event that any party initiates discovery that it deems unduly burdensome.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 25, 2011

¹² See CAB Case Management Order #2 (Sept. 30, 2009) at 3 (unpublished).

¹³ See NRC Staff Notification Regarding SER Schedule (Nov. 29, 2010); NRC Staff Response to December 8, 2010 Board Order and Notification Regarding SER Volume 4 Issuance (Dec. 22, 2010).

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).