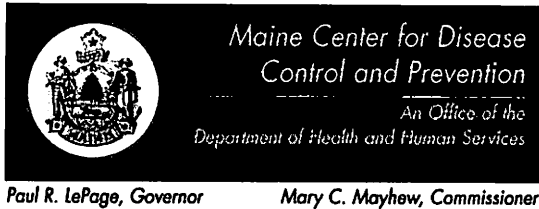


MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



Department of Health and Human Services
Maine Center for Disease Control and Prevention
286 Water Street
11 State House Station
Augusta, Maine 04333-0011
Tel. (207) 287-8016
Fax (207) 287-9058; TTY (800) 606-0215

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.

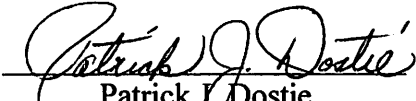
February

- 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

March 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 March the general status of the ISFSI was normal. There were no instances of spurious alarms due to environmental conditions.

There were no fire or security related impairments in March. There were, however, three security events logged (SEL) for the month. Two of the SELs were due to transient environmental conditions and the other was due to a communication problem.

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

- 1st CR: Documented that an in service fire extinguisher was overdue for its six year inspection. The extinguisher was removed from service and replaced with a spare.
- 2nd CR: Documented a channel failure on one 2-way radio. The failed unit was replaced and a backup unit was put in its place.
- 3rd CR: Was written to document a minor hydraulic leak on a man-lift. The spill was only two drops on the motorcycle's concrete pad. The spill was cleaned up and the unit sent off site for repair.
- 4th CR: Was written to document that a spill form was not used for the man-lift leak.
- 5th CR: Documented use of an out-of-revision form.
- 6th CR: Was written to document an internet problem with the loss of a signal to an offsite alarm station.
- 7th CR: Documented a security related issue and is not available for public disclosure.
- 8th CR: Documented the removal of guidance from a procedure prior to the guidance being incorporated into the procedure.

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.

- 9th & 10th CRs: Documented the use of an incorrect or out-dated form instead of one from the current procedure.
- 11th CR: Documented not using a form when one was required.
- 12th CR: Was written to document the sewer vault filling with ground water.
- 13th CR: Documented a door not closing properly. Upon further inspection the door was found to be operating properly.
- 14th CR: Documented a surveillance being performed not in accordance with the procedure. The surveillance was correctly performed the same day.
- 15th CR: Documented a pre-shift briefing not being covered with a person returning from medical leave. The pre-shift briefing was performed during the shift.
- 16th CR: Was written to document the use of another out of revision form instead of using one with the current procedure revision.
- 17th CR: Documented an error in filling out a work request. An incorrect number was entered for the work control number. The correct number was entered into the system.

Other ISFSI Related Activities

1. On March 1st Maine Yankee sent a letter to the Nuclear Regulatory Commission (NRC) requesting the NRC to update its distribution list for NRC correspondence. The Director of Regulatory Affairs for the three Yankee plants shutdown, Connecticut Yankee, Maine Yankee, and Yankee Rowe in Massachusetts was added to the service list.
2. On March 10th a suspicious vehicle was observed at the old East Access Road. The individual was taking photographs of wildlife. The Wiscasset Police Department was notified and intercepted the individual. The local law enforcement agency cautioned the individual and sent him on his way.
3. On March 14th Maine Yankee submitted its annual Decommissioning Funding Assurance Status Report to the Nuclear Regulatory Commission (NRC). The Report estimates that \$110.2 million will be necessary through 2023 for ISFSI operations and subsequent decommissioning of the facility. The current status of the fund at the end of 2010 stood at \$98.1 million. Over the past year the Fund gained \$2.4 million in revenue and the projected cost through 2023 decreased by \$9.7 million.
4. On March 24th Maine Yankee shipped a neutron source (Americium-Beryllium) to Radiation Safety and Control Services (RSCS) in Stratham, New Hampshire. The old neutron source was used to calibrate neutron meters. RSCS is a contract firm that supplies radiological services to Maine Yankee. The neutron source will augment RSCS's radiation detector calibration capabilities. The Maine Radiation Control Program also employs RSCS for calibrating some of its radiation detection instruments.
5. On March 28th another suspicious vehicle was observed on Old Ferry Road. The individual was taking pictures of the deer in the old ball field. The Wiscasset Police Department was notified, intercepted the individual, counseled him and sent him on his way.

Environmental

On March 30th the State performed its quarterly field replacement of its radiation monitoring devices, thermoluminescent dosimeters² (TLDs), near the ISFSI. When the results are received from the vendor, the information will be provided in April's monthly report.

² 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.

Although air filters are collected on a biweekly basis from the roof of the Health and Environmental Testing Laboratory (HETL), they are not analyzed until the end of each calendar quarter. However, due to the nuclear crisis in Japan the State has increased its sampling of HETL's air filter to see if it could detect fallout from the Japanese event. Results of the State's sampling efforts will be presented in April's monthly report.

Maine Yankee Decommissioning

The preliminary working draft of the Confirmatory Summary Report was completed and submitted for review.

Groundwater Monitoring Program

On March 14th Maine Yankee submitted its fifth and final groundwater monitoring report. There is nothing to report on the radiological groundwater monitoring program. Due to the backlog of monthly reports the groundwater report will be evaluated and results reported in next month's report.

Other Newsworthy Items

1. On March 1st the Chairman of the Nuclear Regulatory Commission responded to Washington's Representative Doc Hastings' October 21, 2010, letter requesting a copy of the NRC Staff's Volume III of the Safety Evaluation Report on Yucca Mountain. Dr. Jaczko trusted that the redacted drafts of Volumes II and III satisfied Representative Hastings' October 21st request. A copy of the Chairman's letter is attached.
2. On March 1st Wisconsin Electric settled its lawsuit against the federal government on the Department of Energy's failure to take possession of its spent nuclear fuel in January 1998. Wisconsin originally filed the lawsuit in November of 2000. In December 2009 the Court of Federal Claims in Washington, D.C. awarded the company \$50 million. The Department of Justice (DOJ) appealed the decision, which is pending before the U.S. Court of Appeals. The DOJ offered to settle the lawsuit with the federal government paying \$45.5 million. A copy of the news release is attached.
3. On March 3rd the Nuclear Regulatory Commission Staff responded to the NRC's Atomic Safety and Licensing Board's February 25th order directing the Staff "to show cause why it should not be ordered to place Volume 3 of the Safety Evaluation Report in unredacted form.....in its Licensing Support Network (LSN) collection as a circulated draft". The Staff presented arguments to demonstrate that it "should not be ordered to place an unredacted version of SER Volume 3 on the LSN because it is a preliminary draft, not a circulated draft".
4. On March 4th the Department of Energy (DOE) filed with the Nuclear Regulatory Commission (NRC) a motion to renew a temporary suspension of the license proceedings governing the Yucca Mountain license application. The filing with the Commission was prompted by the NRC's Atomic Safety and Licensing Board's February 25th denial of the DOE's January 21st request to renew a temporary suspension.
5. On March 4th Nuclear Regulatory Commission (NRC) Chairman Jaczko sent a letter to Representative Hall, Chair of the Committee on Science, Space, and Technology, regarding the Committee's February 10th letter requesting the public release of Volume III of the NRC's Safety Evaluation Report on the Yucca Mountain license application. Chairman Jaczko noted that, since

Volume III was in draft stage and therefore pre-decisional, the full draft is not available for public disclosure. However, a redacted form of the report is available. A copy of his letter is attached.

6. On March 7th the Nuclear Regulatory Commission's Atomic Safety and Licensing Board issued an Order denying the State of Nevada's reconsideration motion of two contentions, one legal and one safety, which were initially dismissed by the Board in the Yucca Mountain proceedings.
7. On March 7th the National Association of Regulatory Utility Commissioners filed with the U.S. Court of Appeals for the District of Columbia Circuit requesting relief from the imposition of a Nuclear Waste Fund fee for a non-existent disposal program.
8. On March 8th the U.S. Court of Appeals for the District of Columbia Circuit issued an Order granting the petitioner's motion on the format of the oral arguments for the Yucca Mountain proceedings. A copy of the Order is attached.
9. On March 8th the Nuclear Energy Institute (NEI) and sixteen of its member utilities across the country filed suit in the U.S. Court of Appeals for the District of Columbia Circuit requesting the Court to direct the Department of Energy to suspend its collection of the one-tenth of a cent per kilowatt-hour surcharge on electric bills. NEI contends the fee is not necessary since the Nuclear Waste Fund has a balance of more than \$24 billion and the Administration budgets for FY 2011 and 2012 did not include any funding for the disposal and management of the used nuclear fuel program.
10. On March 10th the Nuclear Waste Strategy Coalition (NWSC) held a conference call to update its members on the status of the Department of Energy's (DOE) withdrawal of its Yucca Mountain license application before the Nuclear Regulatory Commission (NRC) and the NRC's Atomic Safety and Licensing Board's Orders on Volume III of the NRC's Safety Evaluation Report of Yucca Mountain and denying the DOE's motion for a temporary suspension of the Yucca Mountain proceedings. Other updates addressed the oral arguments on the litigation case before the U.S. Court of Appeals for the District of Columbia Circuit, on the National Association of Regulatory Utility Commissioners' and the Nuclear Energy Institute's litigation of the Nuclear Waste Fund fee established under the Nuclear Waste Policy Act. Updates were also provided on the Blue Ribbon Commission's Committee and Subcommittee hearings, the FY 2011 Appropriations' Continuing Resolution and hearings on the FY 2012 Appropriations, and Congressional correspondence on Yucca Mountain. The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 47 stakeholders in 31 states, committed to reforming and adequately funding the U.S. civilian high-level nuclear waste transportation, storage, and disposal program.
11. On March 11th Aiken County, South Carolina filed with the Nuclear Regulatory Commission its response requesting the Commission to reject the Department of Energy's (DOE) motion to renew the temporary suspension to the Yucca Mountain license proceedings. On the same day Nye County, Nevada also filed with the Commission its opposition to the DOE's motion to renew the suspension and requests that the motion be denied.
12. On March 14th the state of Washington filed with the U.S. Court of Appeals for the D.C. Circuit additional information in preparation for the March 22nd oral arguments date set by the Court on the Yucca Mountain license proceedings. A copy of their letter is attached.
13. On March 15th the counsel for the three business leaders from the Tri-City area of the Hanford Site in Washington sent a letter to U.S. Court of Appeals for the District of Columbia Circuit requesting

permission for his clients to listen in on the oral arguments through a telephone hook-up. A copy of the letter is attached.

14. In March the Blue Ribbon Commission (BRC) on America's Nuclear Future issued a document, entitled "What We've Heard". The report is a staff summary of the major themes that resonated in testimony and comments received. The purpose of the report is twofold. The first is to afford an opportunity to those that have provided input to confirm that their key messages have been heard or to highlight what the BRC may have overlooked. The second is to provide an avenue for those who are following, but have not commented, in the BRC's deliberations, an opportunity to raise issues that may have been overlooked. The main themes were summarized into the following seven broad categories:
 - Program Governance and Execution
 - Nuclear Waste Fee and Fund
 - Approach to Siting
 - Reactor and Fuel Cycle Technologies
 - Transport of Used/Spent Fuel and High-Level Wastes
 - Storage of Used/Spent Fuel and High-Level Wastes
 - Disposal System for High-Level Waste
15. On March 16th the quarterly conference call of the Federal Energy Regulatory Commission (FERC) Rate Case Settlement briefing took place with representatives from the states of Connecticut, Maine and Massachusetts. The briefing provided a status on the New England nuclear waste lawsuits against the federal government, the Yucca Mountain litigation case, and other national activities, such as the Blue Ribbon Commission, Congressional appropriation activities, the Nuclear Regulatory Commission, the Decommissioning Plant Coalition, and the National Association of Regulatory Utility Commissioners' and Nuclear Energy Institute's litigations against the Department of Energy's Nuclear Waste Fund fee. According to the discussion the New England Governor's Conference and the New England Council were still supportive of the shutdown plant issues.
16. On March 17th the U.S. Department of Justice (DOJ) sent a letter to the Clerk of the U.S. Court of Appeals for the D.C. Circuit taking issue with the March 14th letter from the petitioners stating that newspaper articles do not constitute authorities under the Court's rules. The DOJ also filed their attachments in preparation for oral arguments scheduled for March 22nd. A copy of the letter is attached.
17. On March 22nd the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments on the Department of Energy's plan to withdraw its license application before the Nuclear Regulatory Commission (NRC) to construct a high-level waste repository at Yucca Mountain in Nevada. The petitioners were represented by the State of Washington's Attorney General's Office and the Counsel for the Tri-City leaders near the Hanford Reservation in Washington. The Department of Justice represented the federal government. The Court questioned the petitioners' contentions on ripeness and why they should not wait for the NRC to act. On the defense side the Court questioned as to why the NRC's inaction should not be considered as a de facto decision and therefore challengeable by the petitioners.
18. On March 23rd the Nuclear Waste Strategy Coalition held a conference call to update its members on the status of the Department of Energy's withdrawal of its Yucca Mountain license application before the Nuclear Regulatory Commission, the oral arguments on the litigation case before the U.S. Court of Appeals for the District of Columbia Circuit, on the National Association of Regulatory Utility Commissioners' and the Nuclear Energy Institute's litigation of the Nuclear Waste Fund fee

established under the Nuclear Waste Policy Act. Further updates were provided on the Blue Ribbon Commission's Committee and Subcommittee hearings and the FY 2011 Appropriations' Continuing Resolution and hearings on the FY 2012 Appropriations.

19. On March 23rd the U.S. Nuclear Waste Technical Review Board announced that it will hold a meeting in Amherst, New York, to discuss the management and disposition of long term storage of vitrified high-level radioactive waste. The Board's visit will culminate a series of visits to government-owned facilities and how they manage and store high-level waste and used nuclear fuel. A copy of the notification is attached.
20. On March 24th the Nuclear Regulatory Commission's Atomic Safety and Licensing Board issued an Order dismissing four Nevada safety contentions. Nevada also agreed that it will not pursue another safety contention since it is a petition for a rule waiver as opposed to a safety contention. A copy of the order is attached.
21. On March 30th Chairman Jaczko of the Nuclear Regulatory Commission responded to the March 11th letter from the Chairman of the House Committee on Oversight and Government Reform. Dr. Jaczko considered the release of the draft pre-decisional partial Safety Evaluation Report, Volume III requested by Representative ISSA as inappropriate. However, he would release it under the condition the document is not available for public disclosure. A copy of the letter is attached.
22. On March 31st four of the five Commissioners for the Nuclear Regulatory Commission jointly sent a letter to Representative Issa relating that they had voted on March 24th-25th to direct the NRC Staff to send a letter in response to his request. Copies of both letters are attached.
23. On March 31st the Chair of the House Committee on Energy and Commerce sent letters to Energy Secretary Chu and Chairman Jaczko of the Nuclear Regulatory Commission notifying them that the Committee will be investigating the Administration's efforts to halt the Yucca Mountain Project. Both letters listed a number of questions and requests for information surrounding the decisions to terminate the nuclear waste repository in Nevada. Copies of both letters are attached.

March 1, 2011

The Honorable Doc Hastings
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Hastings:

I am writing in response to your October 21, 2010 letter regarding the U.S. Nuclear Regulatory Commission (NRC) staff's draft of Volume III of the Safety Evaluation Report (SER) for the U.S. Department of Energy's application to construct a high-level waste repository at Yucca Mountain. During the time since your letter was received, I understand that our Office of Congressional Affairs and your staff have had regular discussions about your request for this draft document. As a result of these conversations, copies of redacted drafts of both Volume II and Volume III of the SER were delivered to your office as soon as these became available on February 17, 2011. These redacted drafts were prepared in response to a Freedom of Information Act (FOIA) request that the agency had received the same week as your letter.

Neither of these volumes were completed and issued by the NRC before the agency transitioned to Yucca Mountain application review closure activities when Fiscal Year 2011 began. Therefore, the documents are pre-decisional drafts that did not complete staff management or legal review. 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 Yucca Mountain application that would focus on findings in the SER, neither my colleagues nor I have access to these drafts in their unredacted form. The NRC staff is currently working very hard to continue thoroughly documenting their technical reviews so that the work that was accomplished is documented and available to the public.

I trust that having these redacted drafts and the fact that these are now publicly available satisfies your request. Thank you for your interest in the NRC and 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,

/RA/

Gregory B. Jaczko

FLSMIDTH**INNOVATIONS IN
ASH HANDLING**[Close](#)

Wisconsin Electric receives \$45.5 million in used fuel settlement

The United States federal government will pay \$45.5 million to settle a lawsuit filed by Wisconsin Electric over what it says is the Department of Energy's failure to dispose of high-level radioactive waste from the Point Beach nuclear plant. The 1982 Nuclear Waste Policy Act was created to allow utilities to begin taking used nuclear fuel from nuclear power plants for disposal in a permanent repository, which was expected to be Yucca Mountain in Nevada.

Wisconsin Electric, part of WE Energies, filed the lawsuit in the U.S. federal claims court in November 2000.

Wisconsin Electric intends to return the \$31 million net proceeds after litigation costs to its customers, and has written to the Wisconsin Public Service Commission to enable it to set up the necessary mechanisms, according to World Nuclear News.

Wisconsin Electric sold the Point Beach nuclear power plant to FPL Energy in 2007.

Subscribe to [Nuclear Power International](#)

To access this Article, go to:

<http://www.powergenworldwide.com/powergenportal/en-us/index/display/generic-article-tools-template.articles.powergenworldwide.nuclear.waste-and-decommissioning.2011.02.Wisconsin-Electric-used-fuel.html>

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.

- 2 -

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,

/RA/

Gregory B. Jaczko

cc: Representative Eddie Bernice Johnson

Identical letter sent to:

The Honorable Ralph M. Hall
Chairman, Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515
cc: Representative Eddie Bernice Johnson

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

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
cc: Representative Donna Edwards

The Honorable Andy Harris
Chairman, Subcommittee on Energy
and Environment
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515
cc: Representative Brad Miller

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1050

September Term 2010

**DOE-Yucca Mtn
NRC-63-001**

Filed On: March 8, 2011 [1296886]

In re: Aiken County,

Petitioner

Consolidated with 10-1052, 10-1069,
10-1082

ORDER

Upon consideration of the amended motion of petitioners for consideration of format for oral argument, it is

ORDERED that the motion be granted to the extent that the following times are allotted for the oral argument of this case scheduled for March 22, 2011, at 9:30 A.M.:

Petitioners	--	20 Minutes (may divide oral argument time as they see fit)
Respondent	--	20 Minutes

The panel considering these cases will consist of Chief Judge Sentelle, and Circuit Judges Brown and Kavanaugh.

Form 72, which may be accessed through the link on this order, must be completed and returned to the Clerk's office by March 15, 2011.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

The following forms and notices are available on the Court's website:

Notification to the Court from Attorney Intending to Present Argument (Form 72)



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Ecology Division
PO Box 40117 • Olympia, WA 98504-0117 • (360) 586-6770

March 14, 2011

Mark Langer, Clerk
U.S. Court of Appeals, DC Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

RE: *In Re Aiken County*,
U.S. COA, DC Circuit No. 10-1050 consolidated with 10-1052, 10-1069, 10-1082

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), the consolidated Petitioners submit the following supplemental authorities:

1. Frederic J. Frommer, *NRC to end work on nuke site*, Washington Times, February 2, 2011
2. Steve Tetreault, *NRC chairman says Yucca Mountain closeout to include license panel*, Las Vegas Review-Journal, February 2, 2011 (relevant portions identified)
3. Memorandum from Catherine Haney, Director of the Office of Nuclear Material Safety and Safeguards, to the Nuclear Regulatory Commission, *Update on the Yucca Mountain Program* (Feb. 4, 2011 as revised Mar. 1, 2011), including attached staff non-concurrences (relevant portions identified)
4. Excerpts from U.S. Nuclear Regulatory Commission, Publication No. NUREG-1100, FY 2012 Congressional Budget Justification, Vol. 27 (Feb. 2011) (NRC Budget) (relevant portions identified)
5. Excerpts from Department of Energy, Publication No. DOE/CF-0063, FY 2010 Congressional Budget Request, Vol. 7 (Feb. 2011) (DOE Budget) (relevant portions identified)
6. Memorandum from Daniel J. Graser, Licensing Support Network Administrator, to Judges Moore, Ryerson, and Wardwall of the Atomic Safety and Licensing Board, *Budgetary Support for Licensing Support Network* (Feb. 18, 2011)

Mark Langer
March 14, 2011
Page 2

These authorities go to the issues of finality, ripeness for review, administrative exhaustion, and primary jurisdiction with respect to the Respondents' decisions and actions (including those by Respondent Nuclear Regulatory Commission), as discussed in the Brief of Petitioners at 27-34; the Respondents' Response Brief at 30-34 and 36-46; and the Petitioners' Reply Brief at 8-12. Specifically, the authorities provide recent evidence of the extent to which the decision to reject the Yucca Mountain repository site and the statutory process for developing that site has been fully implemented by Respondent Department of Energy (which has already eliminated the administrative program supporting repository licensing and development and is planning "site remediation" activity in 2011), and is being implemented by Respondent NRC (which has terminated its own license review activity and is eliminating the hearing board responsible for adjudicating the Yucca Mountain license application).

Sincerely,

s/ Andrew A. Fitz

ANDREW A. FITZ
Senior Counsel
(360) 586-6752

AAF:dmm
Enclosures

cc: All Parties of Record

K&L Gates LLP
1601 K Street NW
Washington, DC 20006-1600
t 202.778.9000 www.klgates.com

March 15, 2011

Barry M. Hartman
D 202.778.9338
F 202.778.9100
barry.hartman@klgates.com

Mark J. Langer
Clerk of Court
U.S. Court of Appeals for District of Columbia
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Fifth Floor
Washington, DC 20001-2866

ATTN: Shana Thurmond

Re: *In Re Aiken County, No. 10-1050*

Dear Mr. Langer:

I am writing on behalf of my clients, Robert Ferguson, William Lampson and Gary Petersen, plaintiffs in *Ferguson v. Obama et al.*, No. 10-1052 (consolidated under the case noted above). This case is scheduled for oral argument on Tuesday, March 22, 2011 as the third case in the morning.

My clients are individuals, each of whom has lived and worked in the state of Washington near a site that gives them standing to bring this action. Two of them will not be able to attend the argument, and it is unclear at this time if the third will be able to attend. One client is over 70 and recently had back surgery, so a flight across the country is not advised at this time. They have asked whether it might be possible for those that cannot attend to listen to the argument via a telephone hook up. I believe we can arrange to have them in one, and at worst, two locations. They understand and agree that they cannot and will not record it, nor will they permit others to listen without leave of the Court.

I have notified counsel to the parties and none object to this request.

Thank you very much for your consideration.

Respectfully submitted,



Barry M. Hartman

Counsel to Robert Ferguson, William Lampson
and Gary Petersen



Environment and Natural Resources Division

EJDURKEE 514-4426
90-13-5-13056

Appellate Section
P.O. Box 23795
L'Enfant Plaza Station
Washington, DC 20026-3795

Telephone (202) 514-2748
Facsimile (202) 353-1873

March 17, 2011

Mr. Mark Langer
Clerk, U.S. Court of Appeals
For the D.C. Circuit
333 Constitution Ave., NW
Washington, D.C. 20001

Re: *In re Aiken*, Nos. 10-1050, 10-1052, 10-1069, 10-1082; Response to Petitioners'
March 14, 2011, letter

Dear Mr. Langer:

Invoking Fed.R.App.P. 28(j), petitioners filed a March 14, 2011, letter with this Court. The letter points to news articles and government budget documents concerning the proposed Yucca Mountain repository site, and says that these materials "go to" finality, ripeness, exhaustion, and primary jurisdiction issues.

News articles and budget documents are not "authorities" within Rule 28(j)'s meaning. They are not properly before this Court. *E.g., Utah v. Dept. of Interior*, 535 F.3d 1184, 1196 n.7 (10th Cir. 2008).

Regardless, these materials - which petitioners characterize as "recent evidence" that the "decision to reject" the Yucca site "has been fully implemented" by DOE and "is being implemented" by NRC - merely reflect the long-known reality that DOE has sought to withdraw its application and the Obama Administration has proposed no further Yucca funding in fiscal year 2012. It is prudent for government agencies to plan for that eventuality now. Insofar as petitioners suggest that recent budget developments show unlawful agency action, the claim is not within this Court's jurisdiction. *See Public Citizen v. NRC*, 845 F.2d 1105, 1109-1110 (D.C. Cir. 1988); *Riffin v. Surface Transp. Bd.*, 331 F. Appx. 751, 752 (D.C. Cir. 2009) (collecting cases adhering to incurably premature doctrine). A fresh petition for review, filed after the disputed agency action, would be necessary. Direct-review actions in this Court rest on an existing record. They are not the same as ordinary civil actions, where the record is dynamic and claims can be added as events warrant.

The Yucca Mountain licensing proceeding remains pending before the NRC. Recently, NRC's hearing tribunal, the Atomic Safety and Licensing Board, issued a decision refusing to suspend licensing proceedings and has made other rulings. Attachments A-D. DOE has asked the Commission to issue a temporary suspension. The Commission has not made a decision on whether to issue such a suspension or a decision on whether the Board rightly refused to allow DOE to withdraw its application.

Sincerely,

/s/ John F. Cordes
Counsel for Nuclear Regulatory Commission

/s/ Ellen J. Durkee
Counsel for Department of Energy



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
2300 Clarendon Boulevard, Suite 1300
Arlington, VA 22201
703-235-4473

March 23, 2011
For Immediate Release

Karyn D. Severson
External Affairs

NWTRB to Discuss Management and Disposition of West Valley Demonstration Project Nuclear Wastes

The U.S. Nuclear Waste Technical Review Board will hold a public meeting in Amherst, New York, on Wednesday, April 27, 2011, to discuss the West Valley Demonstration Project (WVDP). Currently planned are presentations on the WVDP by representatives of the New York State Energy Research and Development Authority and the U.S. Department of Energy's (DOE) Office of Environmental Management. Other issues expected to be discussed include previous reprocessing and vitrification activities at the WVDP; long-term onsite storage of vitrified high-level radioactive waste (HLW); determination of waste classification of the melter from the vitrification facility; and the final Environmental Impact Statement and *Record of Decision* on decommissioning and/or long-term stewardship at the WVDP. Also planned are presentations and a panel discussion on the 2008-9 study on Quantitative Risk Assessment of the State Licensed Radioactive Waste Disposal Area.

The meeting will be held at the Buffalo Marriott Niagara; 1340 Millersport Highway; Amherst, New York 14221; (tel) 716-689-6900; (fax) 716-689-0483. A block of rooms has been reserved at the hotel for meeting attendees. *To ensure receiving the meeting rate, room reservations must be made by April 8, 2011.*

Reservations can be made online at www.buffaloniagaramarriott.com using the following procedure: In the "Rates & Availability" box, enter the reservation dates; click "Special Rates & Awards"; enter USIUSIA under "Group Code"; click on "FIND"; and make your reservation when the Group block appears. To reserve by phone, call 800-334-4040 and indicate that you are attending a meeting under the Group block name "NUCLEAR WASTE."

A detailed agenda will be available on the Board's Web site at www.nwtrb.gov approximately one week before the meeting. The agenda also may be obtained by telephone request at that time.

The meeting will be open to the public, and opportunities for public comment will be provided. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. It may be necessary to set a time limit on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on library-loan in paper form from Davonya Barnes of the Board's staff after May 18, 2011.

The Board was established as an independent federal agency to provide ongoing objective expert advice to Congress and the Secretary of Energy on technical issues and to review the technical validity of DOE activities related to implementing the Nuclear Waste Policy Act. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. Board reports, correspondence, congressional testimony, and meeting transcripts and materials are posted on the Board's Web site.

The Board's visit to West Valley will complete a series of visits to federal facilities where government-owned HLW and spent nuclear fuel are managed and stored. As part of the Board's ongoing technical evaluation of DOE activities, the Board intends to develop a report to Congress and the Secretary of Energy containing Board findings, conclusions, and recommendations based on technical information gathered from visits to the Hanford site in Washington, Idaho National Laboratory in Idaho, the Savannah River Site in South Carolina, and the West Valley site in New York.

For information on the meeting agenda, contact Karyn Severson. For information on lodging or logistics, contact Linda Coultry. They can be reached at 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201-3367; (tel) 703-235-4473; (fax) 703-235-4495.

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

March 24, 2011

ORDER
(Dismissing Contentions)

In LBP-10-22, CAB-04 resolved ten Phase I legal issues raised by admitted contentions sponsored by the State of Nevada (Nevada) and the Nuclear Energy Institute (NEI) and denied two Nevada rule waiver petitions.¹ The Board also instructed the affected parties to seek agreement on a stipulation regarding the effects of its rulings on admitted contentions.² On behalf of the affected parties, the Department of Energy (DOE) filed the joint stipulation of DOE, the NRC Staff, Nevada, and NEI.³ The stipulation identifies the contentions that the parties agree are subject to dismissal and the contentions on which the parties do not agree as to the effect on them of the Board's legal rulings.⁴

¹ See LBP-10-22, 72 NRC __, __ (slip op. at 5-36) (Dec. 14, 2010).

² LBP-10-22, 72 NRC at __ (slip op. at 36).

³ U.S. Department of Energy's Joint Report in Response to CAB Orders of December 8, 2010 and LBP-10-22 (Jan. 21, 2011) [hereinafter Joint Report].

⁴ See Joint Report, Attachment, Joint Stipulation Among DOE, Nevada, NEI and NRC Staff Regarding Admitted Contentions Affected by LBP-10-22 (Jan. 21, 2011).

The affected parties agree that four of Nevada contentions, NEV-SAFETY-041, NEV-SAFETY-146, NEV-SAFETY-169, and NEV-SAFETY-201 are subject to dismissal.⁵ The Board agrees, accepts the joint stipulation as to those contentions, and dismisses NEV-SAFETY-041, NEV-SAFETY-146, NEV-SAFETY-169, and NEV-SAFETY-201.⁶

Finally, with regard to the remaining Phase I contentions identified by the parties in the joint stipulation⁷ as directly or indirectly affected by the Board's rulings in LBP-10-22, DOE or the NRC Staff should timely file dispositive motions seeking appropriate relief, such as a motion to dismiss a contention in whole or in part.⁸ Because the parties already have fully briefed the legal issues resolved by the Board in LBP-10-22 and filed memoranda regarding the effect of those rulings on the admitted contentions of NEI and Nevada, any such motions should be very brief.⁹

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 24, 2011

⁵ Id. at 2-3, 5.

⁶ The joint stipulation also recites that the parties agree that Nevada will not pursue NEV-SAFETY-203 before the CAB. Id. at 6. In denying Nevada's rule waiver petition in LBP-10-22, the Board stated that "[a]lthough, styled as a contention, NEV-SAFETY-203 is actually a petition for a rule waiver pursuant to 10 C.F.R. § 2.335." LBP-10-22, 72 NRC at ___ (slip op. at 4). So that there will be no misunderstanding in tracking the hundreds of contentions in this proceeding, NEV-SAFETY-203 is dismissed.

⁷ I.e., NEV-SAFETY-009, -010, -011, -012, -013, -019, -130, -149, -161, -162, -171, -202; NEI-SAFETY-05, -06.

⁸ For purposes of such motions, the time period prescribed in 10 C.F.R. § 2.323(a) shall not be applicable.

⁹ It is the Board's expectation that any such motion normally would not exceed two or three pages per challenged contention.

NOT FOR PUBLIC DISCLOSURE

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



CHAIRMAN

March 30, 2011

**The Honorable Darrell E. Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515**

Dear Mr. Chairman:

You asked in a March 11, 2011 letter for a significant number of U.S. Nuclear Regulatory Commission (NRC) internal documents including draft pre-decisional versions of Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain license application, as well as adjudicatory information associated with that proceeding. The former is a document that not even my fellow Commissioners or I have had access to in an un-redacted form, and the confidentiality of the latter is crucial for deliberations to be able to be held in an environment free from political interference. Providing you with this type of information is inconsistent with decades of established Commission practice designed to preserve the agency's fundamental ability to conduct fair and impartial deliberations.

Although I do not believe it is appropriate to provide the draft predecisional partial SER, a majority of the Commissioners are willing to do so with the understanding that it is being provided for your use but not for public release. Therefore, that document is provided in a sealed enclosure to this letter. Drafts of our technical review documents are typically not released publicly because they state only the preliminary, rather than final, staff findings. Until they are fully vetted by the NRC staff, the findings cannot be the basis for any regulatory positions taken by the NRC staff. The draft predecisional SER document is not currently part of the official hearing record. The staff determined that the draft did not meet the criteria for inclusion in the Licensing Support Network, a determination which the Licensing Board has asked the staff to explain. Any unauthorized public release of this document would establish a dangerous precedent, setting the agency up to provide potentially incorrect or misleading information to the public, and to litigate multiple draft positions in our hearing process. This would result in an inappropriate and unworkable licensing process for everything from license renewals for operating reactors to the potential licensing of new reactors and other facilities.

The impropriety of Congressional influence over matters which are the subject of agency adjudications was explored in Pillsbury v. FTC, 354 F.2d 952 (5th Cir. 1966), which established what is commonly referred to as "the Pillsbury doctrine." That doctrine established that parties to adjudications have the right to hearings that are not tainted by Congressional interference. To avoid Congressional pressure on agency decision-makers that could impermissibly taint an administrative adjudication, the Commission does not generally respond to requests for information regarding adjudicatory matters. In this politically charged proceeding, I believe that any disclosure beyond your staff of the redacted portions of the draft SER would taint the high-level waste proceeding because of the multiple number of parties and a possible appearance of an effort to exert political influence to force the agency to disclose draft findings still subject to senior staff review.

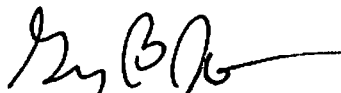
NOT FOR PUBLIC DISCLOSURE

NOT FOR PUBLIC DISCLOSURE

-2-

It is important that there is complete and accurate information released about the facts of this matter, not draft or incomplete documents. My hope for the sake of the efficiency of all the agency's ongoing and future licensing actions and the integrity of this specific hearing, is that you and your staff will respect these concerns about established safeguards to the deliberative process, and not take any action that could set a dangerous precedent going forward.

Sincerely,

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

Gregory B. Jaczko

Enclosure: As stated

cc: Representative Elijah E. Cummings

NOT FOR PUBLIC DISCLOSURE



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

COMMISSIONER

March 31, 2011

The Honorable Darrell E. Issa
Chairman, House Committee on Oversight
and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Issa:

We have been informed that, on March 30, 2011, U.S. Nuclear Regulatory Commission Chairman Jaczko responded to your request, dated March 11, 2011, that NRC provide an unredacted version of Volume III of the draft Safety Evaluation Report related to the Yucca Mountain license application. We write to inform you, however, that we four members of the Commission voted on March 24-25, 2011, to direct staff to send the enclosed letter in response to your request.


Sincerely,



Kristine L. Svinicki



George E. Apostolakis



William D. Magwood, IV



William C. Osterdorff

March 25, 2011

The Honorable Darrell E. Issa
Chairman, House Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

In response to your letter of March 11, 2011, regarding the Committee's investigation into the Yucca Mountain project, the Commission has directed me to provide the unredacted version of Volume III of the Safety Evaluation Report for the Yucca Mountain license application. Volume III in unredacted form is not publicly available at this time, and the Commission requests that the Committee hold it in confidence.

The Staff considers this document pre-decisional. None of the Commissioners have had access to it in its unredacted form. The Commission has received copies of only those portions that were released to the public as a result of a Freedom of Information Act request.

The agency continues to produce documents responding to the remaining requests in your March 11 letter, and will provide those to the Committee as you have requested.

Respectfully,

Rebecca L. Schmidt

Director
Office of Congressional Affairs

Encl. As stated

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

March 31, 2011

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

Dear Secretary Chu:

We appreciate your March 11, 2011, response to our February 24, 2011, letter requesting information regarding your position on Yucca Mountain. We write today to notify you that the Committee on Energy and Commerce and its Subcommittee on Environment and the Economy are investigating the decision making related to efforts to terminate the high-level waste repository program at Yucca Mountain.

At this time, we seek information regarding decisions that were made (a) to withdraw the license application that is currently pending before the Nuclear Regulatory Commission (NRC) for authorization to construct a repository at Yucca Mountain and (b) to terminate Department of Energy (DOE) support for the Yucca Mountain repository program while the withdrawal petition (and related federal litigation) remains unresolved. We also seek all of the information necessary to evaluate DOE's adherence to its statutory obligations and responsibilities under the Nuclear Waste Policy Act of 1982, as amended, and to determine whether DOE is taking actions that will increase the Department's or taxpayer financial liabilities.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following within two weeks of the date of this letter. We also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is November 4, 2008, to the present.

1. Please explain your role, as Secretary of Energy, in the decision to abandon DOE support for the license application and related development of the nuclear waste repository at Yucca Mountain.


- a. List the names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the decision to terminate the nuclear waste repository at Yucca Mountain.
2. Please provide all documents provided to, or generated by, the Presidential transition team during the period November 4, 2008, through January 20, 2009, concerning or relating to the Yucca Mountain repository development or nuclear waste policy, including all transition documents relating to the DOE Office of Civilian Radioactive Waste Management (OCRWM).
3. Did you sign or authorize anyone else to sign any document approving DOE's withdrawal of the Yucca Mountain license application from the NRC?
 - a. If so, provide each such document and explain the rationale behind the decision to sign each such document. If not, please explain why no such authorization was given.
4. Did you sign or authorize anyone else to sign any document approving the DOE actions (a) to dismantle OCRWM and/or (b) to proceed to defund and dismantle the Yucca Mountain project support site operations and offices?
 - b. If so, provide each such document and explain the rationale behind the decision to sign each such document. If not, please explain why no such authorization was given.
5. What technical, scientific, regulatory, financial, policy, or legal information did you receive for the purpose of assisting or informing your decision making related to Yucca Mountain, including, but not limited to, decisions regarding budgeting for DOE's license application support activities, the elimination of OCRWM, the motion to withdraw the license application from the NRC, or the termination of the Yucca Mountain repository program?
 - a. Please provide all documents relating to such information, including but not limited to action or decision memoranda and documents provided to, or in the possession of, the Secretary, the Deputy Secretary, the Under Secretary, the Administrator of the National Nuclear Security Administration, the Assistant Secretary for Environmental Management, or the DOE General Counsel.
6. Please explain the basis for your decision to eliminate the OCRWM and the relevant legal authority upon which you relied as the basis for your ability to make such a decision. In addition, please explain:
 - a. The approximate date you initiated evaluation of OCRWM;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the evaluation and any decisions to eliminate the office;
 - c. When the decision was made to eliminate or otherwise shut down OCRWM;

- d. What the basis was for disbanding and disbursing the functions of OCRWM within other DOE offices;
 - e. What analyses or evaluations were performed to reach, inform, or guide this decision; and
 - f. What the basis was for determining that placement of OCRWM functions in other offices would conform with the statutory requirements and obligations under the Nuclear Waste Policy Act of 1982, as amended.
7. Please provide all documents containing information regarding the elimination, or potential elimination, of OCRWM.
8. Please explain the basis for your decision to withdraw the Yucca Mountain repository license application from the NRC and the relevant legal authority upon which you relied as the basis for your ability to make such a decision. In addition, please explain:
 - a. The approximate date you began the process of evaluating options for the license application withdrawal;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the evaluation of those options;
 - c. When the decision to file a motion to withdraw the application was made;
 - d. What the basis was for deciding to move to withdraw the license and why DOE sought to withdraw "with prejudice";
 - e. What analyses or evaluations were performed to reach, inform, or guide this decision; and,
 - f. What analyses or evaluations were performed to assess the long-term legal, financial, and policy implications of license withdrawal, should it succeed.
9. Provide all documents containing analyses or evaluations relating to the withdrawal of the license application from NRC.
10. Please explain the basis for DOE's decision to terminate operations related to the Yucca Mountain repository development, and explain the decision-making process regarding the shut-down and dismantlement of the site and site offices, the layoffs of DOE contractors and employees, and disbursement or disposal of program property, research, and data. Please also provide an explanation of the legal authority upon which you relied as the basis for this decision. In addition, please explain:
 - a. When the decision was made to terminate the program;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who were responsible for implementing the decision to terminate the program;
 - c. What the basis was for terminating the program before the motion to withdraw the license application from NRC was granted; and
 - d. What analyses, evaluations, or plans were created or discussed to reach, inform, or guide the decision to terminate the program.

11. Provide all documents relating in any way to DOE's deliberations or discussions regarding the evaluation of the Yucca Mountain program and the decision to terminate the program.
12. Has DOE been using the Nuclear Waste Fund (NWF) to fund operations to terminate DOE operations related to the Yucca Mountain repository?
 - a. If so, please explain why you used the Nuclear Waste Fund (NWF) to fund operations to terminate DOE operations related to the Yucca Mountain repository and the legal authority upon which you relied in order to justify spending NWF funds in such a manner.
 - b. Provide all documents relating to the use of the NWF to terminate Yucca Mountain operations.


The term "DOE" refers to the U.S. Department of Energy and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DOE. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

We appreciate your prompt attention to this request.



Fred Upton
Chairman

Sincerely,



John Shimkus
Chairman
Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

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

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

March 31, 2011

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

Dear Chairman Jaczko:

We write to notify you that the Committee on Energy and Commerce and its Subcommittee on Environment and the Economy are investigating the decision-making process related to the pending license application for construction of a high-level waste repository at Yucca Mountain.

At this time, we have questions about certain actions undertaken by you and the Nuclear Regulatory Commission (NRC or Commission) relating to (a) the proposed withdrawal of the license application for authorization to construct a repository at Yucca Mountain currently pending before the NRC; and (b) the defunding and termination of NRC's licensing proceedings of the Yucca Mountain repository license application (including staff technical and safety reviews) at a time when the full Commission has yet to decide the issue or authorize the defunding. We seek information necessary to evaluate the NRC's adherence to its statutory obligations and responsibilities under the Nuclear Waste Policy Act of 1982, as amended. We also seek information necessary to assess whether decisions were made according to NRC procedures and with full information and consideration of the policy, legal, and budgetary impacts of those decisions.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following within two weeks of the date of this letter. We also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is January 1, 2009, to the present.

1. Please provide a detailed chronological description of all NRC actions and decisions relating to the Yucca Mountain construction license application, including, but not

limited to, actions and decisions by the NRC Chairman, the Commission, and the Construction Authorization Board (CAB).

2. Please explain your role in the Administration's decisions concerning the Yucca Mountain license application, including, but not limited to, decisions to begin the closure of Yucca Mountain and to terminate the NRC technical and adjudicatory review of the license application for constructing a repository at Yucca Mountain.
 - a. List the names, titles, offices and roles of individuals, including those within the Office of the Chairman, who participated in deliberations regarding planning, actions, or decisions relating to the Yucca Mountain license application.
 - b. Please provide a list of all meetings and communications that have occurred between the NRC Chairman and the Executive Office of the President or Department of Energy (DOE), including Secretary of Energy Steven Chu, relating to constructing a repository at Yucca Mountain. Please include the dates of all such meetings and communications, the individuals present and a description of the subject matters discussed, and state whether the Commissioners or NRC staff were informed of each such meeting.
 - c. Provide all documents relating to any such meetings or communications.
3. Provide all documents relating to: (a) the development of the proposed FY 2010 budget for license support activities related to the Yucca Mountain license application, (b) any agreement by the Commission about the conditions necessary for terminating the various NRC license review activities, and (c) the decision to terminate Yucca Mountain license review activities in conjunction with FY 2011 Continuing Resolution funding.
4. Provide all documents relating to the April 23, 2010 Commission Memorandum and Order (CLI-190-13) (which vacated the CAB's decision to suspend consideration of DOE's motion to withdraw the license application and ordered the CAB to issue a decision no later than June 1, 2010). This request includes, but is not limited to, all staff memoranda and evaluations.
5. Please describe the specific Commission procedures followed in voting on the appeal (pending before the NRC) of the CAB's decision to deny the motion to withdraw the license application for a repository at Yucca Mountain, including, but not limited to, the dates of each action, vote, and any affirmation of the votes.
 - a. Explain the failure to complete action upon the appeal.
 - b. Provide all documents relating to the scheduling and resolution of the Commission's votes concerning the review of the CAB decision to deny DOE's motion to withdraw its Yucca Mountain license application.
6. Please explain the justification and legal authority for your decision, as NRC Chairman, to direct Commission staff to terminate review of the Yucca Mountain application.
 - a. Provide all documents relating to the direction to cease review of the Yucca Mountain application, including, but not limited to, the memoranda and analyses relating to the justification for the decision or authority to terminate review of the Yucca Mountain application.

- b. Provide all documents relating to the drafting and finalization of the staff Safety Evaluation Reports (SERs) of the Yucca Mountain license application, including, but not limited to, the Safety Evaluation Report Volumes 1 and 3.
7. Has NRC been using the Nuclear Waste Fund (NWF) to fund actions relating to the termination of the NRC's license review?
 - a. If so, please explain the basis for using the Nuclear Waste Fund (NWF) to fund actions relating to the termination of the NRC's license review, and state the relevant legal authority upon which you relied to spend sums from the NWF.
 - b. Provide all documents relating to the use of NWF for termination of license review, including, but not limited to, all assessments of the funding necessary to terminate activities and preserve all information captured in the NRC review process.

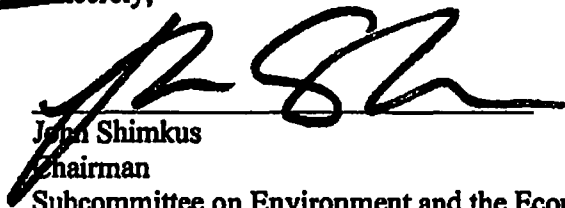
The term "NRC" refers to the U.S. Nuclear Regulatory Commission and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the NRC. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

We appreciate your prompt attention to this request.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Kristine L. Svinicki

The Honorable George Apostolakis

The Honorable William D. Magwood, IV

The Honorable William C. Ostendorff