

# MAINE STATE LEGISLATURE

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State Nuclear Safety Inspector Office  
Maine CDC – DHHS

April 2012 Monthly Report to the Legislature

Executive Summary

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 123<sup>rd</sup> 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.

The report covers activities at the storage facility, including the State's on-going environmental radiation surveillance and the national debate over the licensing and construction of a geologic repository for the disposal of spent nuclear fuel at Yucca Mountain in Nevada. The report's highlights assist readers to focus on the significant activities that took place during the month, both locally and nationally.

LOCAL:

- Maine Yankee forwarded their annual letter to the Maine Department of Environmental Protection (DEP) as per the Environmental Covenant between Maine Yankee and DEP. During the last twelve months Maine Yankee did invoke the Soil Management Plan once for the "installation of a new manhole into an existing storm drain". As part of the excavation process samples were taken and analyzed. No chemical contamination was found in the excavated soils.
- The first quarter results of the State's environmental radiation program continued to illustrate three distinct groupings with the same two stations that have been historically high. The highest stations recorded an average exposure of 24.2 as compared to normal background levels of 15 to 30 on the coast of Maine. However, all the first quarter TLD results averaged two less exposure than the fourth quarter results. This was expected as frozen ground conditions and more snow cover in the winter months primarily impede the out gassing of Radon in the soils.

The national highlights primarily focused on Congressional and other states' actions as noted below and included:

National:

- The Minnesota Senate voted 63-0 to pass a resolution calling upon Congress and the White House to enact legislation that would carry out the Blue Ribbon Commission's recommendations, especially with regard to consolidated interim storage. The resolution will be forwarded to President Obama, Speaker of the House Mr. Boehner, Senate Majority Leader Mr. Reid, and Secretary of Energy Dr. Chu.
- The U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments from the petitioners, the National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute, and the respondent, the Department of Energy (DOE), which was represented by the Department of Justice (DOJ). Two of the three judges seemed sympathetic to the petitioners. The tribunal questioned why the DOE, with a Nuclear Waste Fund balance in excess of \$26 billion, was

collecting fees for a “program that isn’t doing much”. Legal analysts conjectured that the Court will most likely remand the case back to DOE for Energy Secretary Chu to explain why DOE believes it can continue collecting fees despite no national waste program. If the Secretary’s arguments are not convincing, then it is likely the Court will terminate the fees.

- The Arizona Legislature approved a resolution notifying federal officials that they consider Arizona for hosting a recycling and consolidated interim storage facility. The resolution was addressed to the U.S. Congress with notifications to the President of the Senate, to the Speaker of the House and to Arizona’s congressional delegation. Several communities were identified as potential host sites for the nuclear waste facility since they are underlain with solid salt formations that are comparable to the Waste Isolation Pilot Plant in Carlsbad, New Mexico. Arizona joins Nye County, Nevada and Carlsbad, New Mexico as willing hosts for the nation’s nuclear waste.
- Representative Joe Wilson from South Carolina introduced legislation in the House that would require President Obama to certify Yucca Mountain as the geologic disposal site in the United States. If the President failed to certify the Yucca Mountain site, then nuclear utilities would not be required to pay into the Nuclear Waste Fund and the balance of \$27 billion remaining in the Fund would be returned to the utilities. The utilities would then use 75% of the refund to rebate the ratepayers with the remaining 25% to be used at nuclear facilities to enhance their on-site storage and security of the used nuclear fuel. The bill is comparable to the one Senator Graham from South Carolina introduced in the Senate last month.
- The House Subcommittee on Energy and Water Development approved a bill that would restore \$25 million to the Yucca Mountain licensing proceedings that were suspended by the Nuclear Regulatory Commission with \$5 million of the \$25 million earmarked for affected local communities. In a related matter Representative Jeff Duncan from South Carolina introduced legislation that would halt the closure of the Yucca Mountain repository, compel the Nuclear Regulatory Commission to complete its review and issue a determination on the license application. In addition, the legislation would remove the 77,000 metric ton limitation on nuclear waste and require the Nuclear Regulatory Commission to create new limits based on scientific and technical analysis of the full capacity of Yucca Mountain.
- The Senate Committee on Appropriations approved by a vote of 28-1 the Senate Bill, S. 2465, authorizing the Secretary of Energy to conduct a pilot program to license, construct, and operate one or more consolidated storage facilities for spent nuclear fuel and high-level waste, with priority for storage given to shutdown or decommissioned reactor sites. The Bill also provides within 120 days of enactment for the Secretary to issue request for proposals for cooperative agreements with local communities and states for hosting a storage facility. In addition, within 120 days after the issuance of requests for proposals the Secretary must submit to Congress a Pilot Program Plan that will estimate the annual and expected lifetime costs for such a storage facility, including the cost estimates for the financial compensation to the host State, Indian Tribe, and local government, and for future reductions in liability damages due to the Department of Energy’s delays in accepting the waste. The Plan will also include any recommendations for any additional legislation to further the Pilot Program and to ensure the stored wastes will be moved to a geologic repository.

## 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 123<sup>rd</sup> 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](http://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 April the general status of the ISFSI was normal, with no instances of spurious alarms due to environmental conditions.

There was one fire-related impairment that occurred during the month. One of the fire doors was not latching properly over a weekend. The door was repaired and tested the following Monday and placed back into service.

There were no security-related impairments for the month. However, there were two security events that were logged. The first involved a short term loss of a communication line between the off-site alarm monitoring location and the ISFSI. The second documented a transient environmental condition.

There were six condition reports<sup>1</sup> (CR) for the month of April and they are described below.

1<sup>st</sup> CR: Was written to document the late transfer of records to archiving.

2<sup>nd</sup> CR: Documented a review not being performed within its expected timeframe.

3<sup>rd</sup> CR: Was written to document the omission of some drill records from the 2011 archives.

4<sup>th</sup> CR: Documented a program review not being performed to the expected level of detail as required.

5<sup>th</sup> CR: Documented a short term loss of the communication line to an offsite monitoring location.

6<sup>th</sup> CR: Documented testing not being performed as directed by procedure.

### *Other ISFSI Related Activities*

1. On April 2<sup>nd</sup> a worm digger was trespassing on Maine Yankee property. The Local Law Enforcement Agency (LLEA) was notified and responded. However, the LLEA did not intercept the individual as the

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<sup>1</sup> 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 Control Program's website.

worm digger was in a boat before the LLEA arrived. Maine Yankee notified the Nuclear Regulatory Commission's Operations Center of the incident.

2. On April 9<sup>th</sup> Maine Yankee submitted two letters to the Nuclear Regulatory Commission. The first report denoted that "there were no changes made to the facility or the spent fuel cask design, procedures, or any tests or experiments" that could impact safety between April 1, 2010 and March 31, 2012 as defined in section 50.59 of Title 10 of the Code of Federal Regulations (CFR). The second report indicated that there were no changes, tests, or experiments pursuant to 10 CFR 72.48, the licensing requirements for an ISFSI.
3. On April 10<sup>th</sup> Maine Yankee forwarded their annual letter to the Maine Department of Environmental Protection (DEP) as per the Environmental Covenant between Maine Yankee and DEP. During the last twelve months Maine Yankee did invoke the Soil Management Plan once for the "installation of a new manhole into an existing storm drain". As part of the excavation process samples were taken and analyzed. No chemical contamination was found in the excavated soils.
4. On April 10<sup>th</sup> the legislatively mandated group, representing the Department of Environmental Protection, the State Police, the Public Advocate, the Department of Health and Human Services' Radiation Control Program and Maine Yankee, met for its quarterly meeting to discuss the State's and Maine Yankee's activities pertinent to the oversight of the ISFSI. The State Inspector briefed the group on his past and near term activities for the quarter. The Department of Environmental Protection on the status of the Montsweag Dam removal and the two sampling programs at Maine Yankee. The radiological sampling program was completed last year and the chemical program will continue its sampling efforts every five years, except the sampling frequency will be quarterly for the last three years of the 30 year program. All the results have been favorable for both programs. The State Police briefed the group on its activities with FBI intelligence and potential threats. The threat posture was characterized as somewhat quiet for Maine. Further discussions focused on the State Police's equipment needs to maintain their terrorist readiness response. The State Police and Maine Yankee were tasked with developing a proposal for the group's consideration. Next, Maine Yankee briefed the group on national activities to get the spent fuel moved with Carlsbad, New Mexico advocating hosting a consolidated interim storage facility and Senator Feinstein's efforts in Congress to move stored spent fuel to an interim storage site. Maine Yankee further briefed the group on the status of its security exemption request, new developments within the Nuclear Regulatory Commission's rules pertaining to ISFSI's, and upcoming physical changes and equipment at its ISFSI in Wiscasset.
5. On April 30<sup>th</sup> while reviewing a tape from the previous day a security officer noted that another worm digger had trespassed on Maine Yankee property. Even though the local law enforcement agencies were not notified, Maine Yankee did report to the Nuclear Regulatory Commission's Operations Center the trespassing incident.

## Environmental

On April 30<sup>th</sup> the State received the first quarter results from the field replacement of its thermoluminescent dosimeters<sup>2</sup> around the ISFSI and the Maine Yankee industrial site. The results from the quarterly TLD change out continued to illustrate three distinct exposure groups: elevated, slightly elevated, and normal. The high stations identified were G and K and averaged 24.2 milliRoentgens<sup>3</sup> (mR).

<sup>2</sup> Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For a further explanation, refer to the glossary on the Radiation Program's website.

<sup>3</sup> A milliRoentgen (mR) is a measurement of radiation exposure. For a further explanation, refer to the glossary on the Radiation Program's website.

The moderately elevated stations were E, F, L, and Q, and averaged 21.8 mR. For the third consecutive quarter there appeared to be a subset of the moderately high group which contained the stations J, M, and O with a slightly lower average of 20.4 mR. There appears to be no straightforward reason for the slightly elevated status except to possibly attribute it to localized background variability in the radiation levels at these stations. The stations appeared to trade places. For example, stations M and O were in different groupings the previous month. Station M, which was in the normal group last quarter, was now in the slightly elevated group whereas station O, which was in the moderately elevated group the previous quarter, fell to the slightly elevated group this quarter. These deviations will be tracked over the next several quarters to see if a pattern develops. The remaining stations A, B, C, D, H, I, N and P averaged 18.6 mR.

The Maine Yankee industrial site TLDs averaged 18.5 mR, which is comparable to the normally expected background radiation levels of 15 to 30 mR on the coast of Maine. Some of the background levels are highly dependent upon tidal effects, and local geology. However, virtually all the stations exhibit seasonal fluctuations that are affected by the out gassing of the naturally radioactive gas, Radon.

All the first quarter TLD results averaged around two mrem less exposure than the fourth quarter results. This was expected due to the snow cover primarily impeding the out gassing of Radon from the soils.

The control TLDs that are stored at the State's Radiation Control Program in Augusta averaged about 10.1 mR. The storing of the control TLDs at the Health and Environmental Testing Laboratory's (HETL) pre-World War II steel vault had an affect on the TLD values. The 10.1 mR is slightly lower than last quarter's control results of 10.3 mR. The impact of the lower Radon gas also affected HETL's background radiation levels. The controls are part of a program to better quantify the individual impacts of storage and transit exposures to the thermoluminescent dosimeters (TLDs).

As a further application of this TLD assessment, on March 15th three of the seven control TLDs received for the second quarter of 2012 were returned to the State's TLD vendor, Global Dosimetry in California, for an analysis of the transportation exposures. The initial set of results from the control TLD badges returned indicated an average of 5.9 mR for the total exposure picked up between leaving the vendor, arriving at the State and then immediately being shipped back and received by the vendor. The 5.9 mR represented a decrease of 1.2 mR when compared to last quarter's 7.1 transit badges. The increase is attributed to no overnight stay in the State Inspector's office. The on-going assessment, which is expected to last about two years, will allow for more accurate comparisons between control TLDs and field results in addition to quantifying the actual radiological impact from the stored nuclear fuel.

The field control TLDs at Ferry Landing on Westport Island, Edgecomb Fire Station, and the roof of the State's Health and Environmental Testing Laboratory read 21.5, 20.5, and 18.0 mR, respectively. As expected, the current values were less than the previous quarter's results.

As noted in earlier reports the State's maintains an environmental air sampler on the roof of the Health and Environmental Testing Laboratory (HETL) for local or national events. The air sampler was extremely helpful during last year's Fukushima event in Japan as it was instrumental in quantifying the levels of radioactivity that was coming from the cripple reactors. This year's first quarter results did not identify any unusual radioactive elements and were within historical ranges for both gross beta<sup>4</sup> and Beryllium-7, a naturally radioactive cosmogenic element that is produced from cosmic rays interacting with the nitrogen and oxygen atoms in the

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<sup>4</sup> Gross Beta is a simple screening technique that measures the total number of beta particles emanating from a potentially radioactive sample. High values would prompt further analyses to identify the radioactive species. Refer to the glossary on the website for further information.

atmosphere. The gross beta results ranged from 17.0 to 33.0 femto-curies per cubic meter (fCi/m<sup>3</sup>)<sup>5</sup>. A composite of the five bi-weekly air filter samples was used to measure the Beryllium-7's concentration of 62.7 fCi/m<sup>3</sup>.

It should be noted that the air sampler on HETL's roof stopped functioning completely between February 22<sup>nd</sup> and March 7<sup>th</sup>. Since the hour meter was not operating there was no way of discerning when the unit failed. Anecdotally, the Laboratory observed the loading on the filter and noted a darkening that was about three fourth's of what is normally observed. This would imply that the unit functioned for may be seven to ten days beyond the February 22<sup>nd</sup> filter change before shutting down. However, this information is inadequate to quantify the volume of air that passed through the sampler. Therefore, the air filter had to be discarded. A back-up sampler was available and was placed into operation the same day the failed unit was discovered. The back-up sampler was the one the State used at the Maine Yankee site that was discontinued on December 30, 2009.

For informational purposes Figure 1 on page 7 illustrates the locations of the State's 17 TLD locations in the vicinity of the ISFSI. The State's locations are identified by letters with the two highest locations being stations G and K.

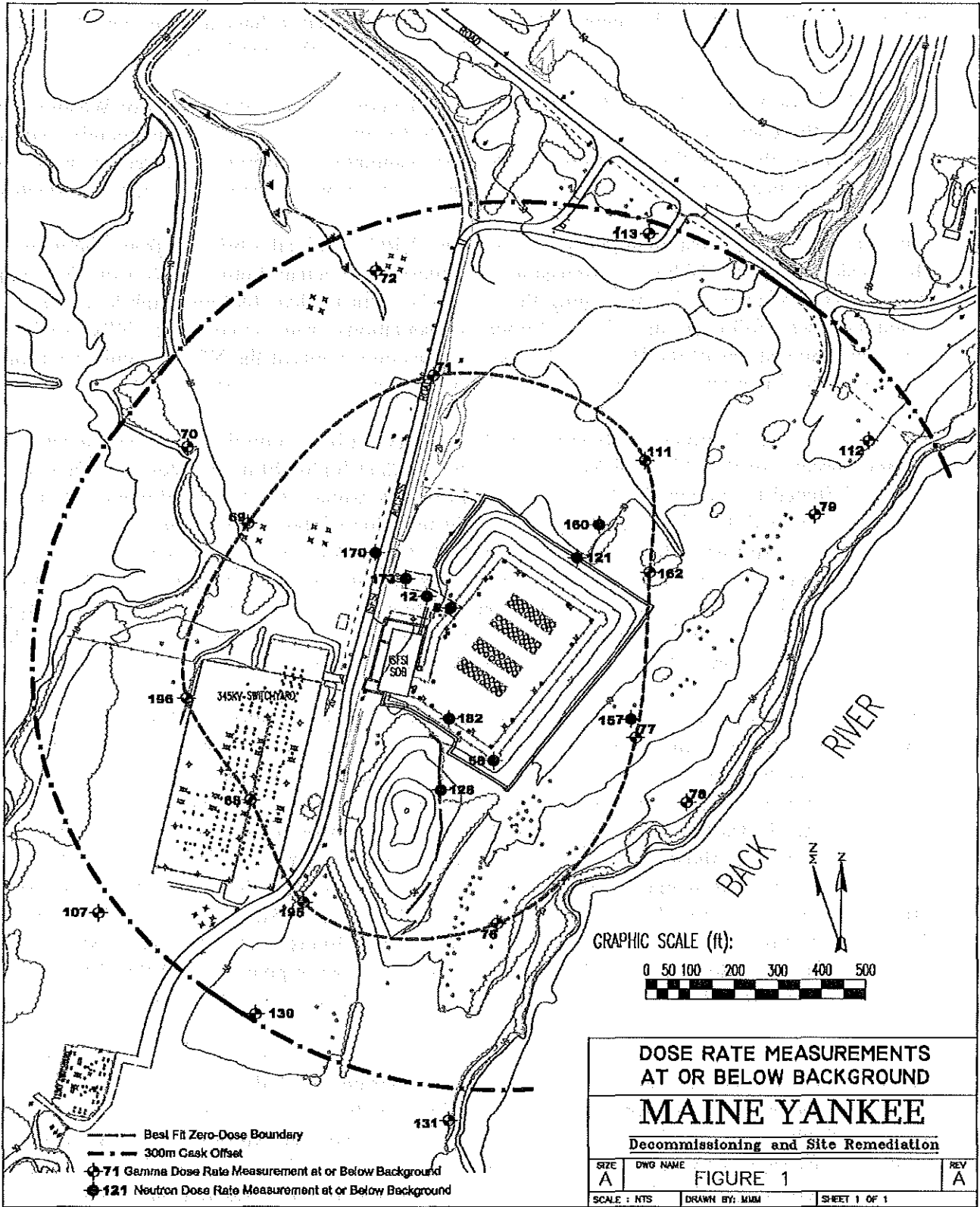
### Other Newsworthy Items

1. On April 2<sup>nd</sup>-5<sup>th</sup> a national summit on the Nuclear Fuel Cycle was held in Carlsbad, New Mexico. The summit highlighted some unique attributes as to why Carlsbad and the Waste Isolation Pilot Plant could play a key role in solving America's nuclear waste problems. The discussion included a number of local, state and national government leaders and their willingness to host a consolidated interim storage facility as well as potentially hosting a geologic repository for the nation's used nuclear fuel stockpile. The summit also featured experts covering various facets of the entire nuclear fuel cycle from uranium mining to fuel enrichment to fabrication to waste minimization to power generation and new technology to licensing and regulations to social acceptance and community support to interim storage to reprocessing and recycling and finally, to disposal options for the nuclear waste. A copy of the agenda is attached.
2. On April 4<sup>th</sup> the Nuclear Waste Strategy Coalition held its biweekly conference call to update its membership on congressional activities, the Department of Energy, and the Nuclear Regulatory Commission (NRC), litigation before the Appeals Court, and activities of the Blue Ribbon Commission. The conference call focused mainly on congressional activities, principally legislation for the Harbor Maintenance Trust Fund. The Fund was established to recover operation and maintenance costs at U.S. coastal and Great Lakes harbors from maritime shippers. Taxes assessed to the shippers are deposited into the Fund account from which Congress appropriates funds for harbor dredging. Despite a large surplus in the trust fund, the busiest U.S. harbors are presently under-maintained with 59 of the nation's busiest ports available less than 35% of the time, which increases the cost of shipping. New legislation was introduced to ensure that the funds in the account are used for their intended purpose instead of being diverted to balance the federal budget. Ironically, the Nuclear Waste Fund (NWF) is set up very similar to the Harbor Maintenance Trust Fund in that Congress appropriates funds from the NWF account based on a fee assessed on nuclear utility generators. As in the Harbor Fund, a very large surplus exists in the NWF (over \$26 billion)

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<sup>5</sup> A fCi/m<sup>3</sup> is an acronym for a feinto-curie per cubic meter, which is a concentration unit that defines how much radioactivity is present in a particular air volume, such as a cubic meter. A "femto" is a scientific prefix for an exponential term that is equivalent to one quadrillionth (1/1,000,000,000,000,000).

Figure 1



with the surplus being used to balance the federal budget. Therefore, there appeared to be an opportunity to seize on the plight of the Harbor Fund as a bridge for the NWF issues. The Harbor Trust Fund was finding traction in the House with over 200 members supporting it. Since most of



the 200 members were also supportive of the Yucca Mountain repository, it appeared very beneficial to discuss the NWF issues with those House members and see if enough support could be mounted to tack on an amendment to the existing Harbor Maintenance Trust Fund legislation or craft a similar bill for the NWF. Due to the lengthy discussion it was decided to have another conference call the following week to discuss those items that were not covered in this conference call.

3. On April 6<sup>th</sup> the Senior Counsel from the Attorney General's Office of the State of Washington sent a letter to the Clerk of the U.S. Court of Appeals for the D.C. Circuit supplementing additional information on their petition to compel the Nuclear Regulatory Commission to reopen and complete the license application review of the Yucca Mountain repository. A copy of the letter is attached.
4. On April 10<sup>th</sup> the Nuclear Regulatory Commission (NRC) received a briefing from two members of the President's Blue Ribbon Commission on America's Nuclear Future (BRC) on their national policy recommendations for managing the country's spent nuclear fuel and high-level waste. The discussion was followed up with additional presentations from senior level NRC staff on the potential implications of the BRC's recommendations on several of the NRC's regulatory programs. Copies of the Chairman's opening remarks and briefing agenda are attached.
5. On April 11<sup>th</sup> the National Association of Regulatory Utility Commissioners sent a letter to the Acting Director of the Office of Management and Budget highlighting the steps the Department of Energy initiated to support the President's position to terminate the Yucca Mountain Project. The letter also outlined the efforts of the Co-Chairs of the Blue Ribbon Commission who sent a letter to the President expressing their sentiments that all the efforts and recommendations of the Blue Ribbon Commission are for naught if the issue of the nuclear funding was not addressed immediately. The letter further expressed disappointment over the President's Budget not requesting any funding to fix the nation's nuclear waste program by implementing the Blue Ribbon Commission's recommendations. A copy of the letter is attached.
6. On April 11<sup>th</sup> Representative Joe Wilson sent a letter to House members inviting them to become a cosponsor of legislation that he would be introducing. The legislation would provide 30 days for the President to certify that Yucca Mountain remains the site for disposing of high-level waste. If the President failed to certify, then nuclear utilities would no longer be required to pay the fee assessed for generating electricity. The balance including the interest accumulated in the Nuclear Waste Fund would be returned to those utilities that paid into the Fund with the provision that 75% be refunded to ratepayers and 25% would be retained to enhance the security at the nuclear facilities. The final stipulation would be for defense-related wastes to be shipped from the current states to Yucca Mountain starting January 1, 2017. If the Department of Energy (DOE) failed to start shipments from the affected states, then the DOE would be forced to pay a penalty of \$1,000,000 per day and not to exceed \$100,000,000 per year to the affected states. A copy of the letter is attached.
7. On April 11<sup>th</sup> the Nuclear Waste Strategy Coalition held its second biweekly conference call to continue its discussion on the Harbor Trust Fund opportunity besides updating its membership on upcoming congressional appropriation hearings, litigation before the Appeals Court, and activities of the Blue Ribbon Commission, the Department of Energy, and the Nuclear Regulatory Commission (NRC). Concern was expressed at reopening the Nuclear Waste Policy Act legislation and potential unintended consequences. The membership's message to Congress was fivefold – Yucca Mountain was still the law of the land, complete the Nuclear Regulatory Commission's licensing review of Yucca, reform the Nuclear Waste Fund, restore transportation funding to regional groups, and timely Department of Energy (DOE) actions such as the issuance a six month report on what's necessary to implement the Blue Ribbon Commission's recommendations. A perspective was presented that DOE did not want to lose control of the nuclear waste funds as those monies represented people,

programs and ultimately power. The litigation issues involved the lawsuit against the NRC for inaction on the Yucca Mountain proceedings with the second case dealing with the suspension of nuclear waste fund fees until an assessment is performed by the Department of Energy. The Court is expected to hear oral arguments on May 2<sup>nd</sup> for the Yucca issue and April 20<sup>th</sup> on the Nuclear Waste Fund fee case.

8. On April 12<sup>th</sup> a report was prepared for the Nevada Agency for Nuclear Projects, entitled, "Counties Potentially Affected by High-Level Nuclear Waste Shipments to Yucca Mountain, NV". The report identified all the affected counties throughout the country that would be impacted by truck and rail shipments. The report indicated the shipment routes would pass through 955 counties with a population of about 177 million.
9. On April 17<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) forwarded a letter to the Chair and ranking member of the House's Appropriations Subcommittee on Energy and Water Development thanking them for their support on an appropriations bill directing the Department of Energy (DOE) to take prompt action towards fulfilling its obligation to safely remove the used nuclear fuel from reactor sites. In sharing their sense of urgency the NWSC strongly advocated for
  - Ensuring access to the Nuclear Waste Fund
  - Removing the spent nuclear fuel and high-level waste from reactor facilities, and
  - Moving towards an independent waste organization

The letter further expressed dismay over the Administration's and DOE's passive response to the Blue Ribbon Commission's report.

10. On April 17<sup>th</sup> the U.S. Court of Appeals for the District of Columbia Circuit issued an Order prescribing the allotted times for the oral arguments for the lawsuit filed by the petitioners (the states of Washington and South Carolina, Aiken County in South Carolina, Nye County in Nevada, and the National Association of Regulatory Utility Commissioners) against the Nuclear Regulatory Commission. The oral arguments are slated for May 2<sup>nd</sup>. A copy of the Order is attached.
11. On April 17<sup>th</sup> the Senior Attorney for the Nuclear Regulatory Commission (NRC) sent a letter to the Clerk of the Court of Appeals for the D.C. Circuit responding to the petitioners' letter dated April 6<sup>th</sup> on their lawsuit against the NRC for terminating the Yucca Mountain license proceedings. The letter clarified the NRC's perspective and took exception to the characterization portrayed in the April 6<sup>th</sup>'s letter. Oral arguments are scheduled for May 2<sup>nd</sup>. A copy of the letter without the enclosure is attached.
12. On April 17<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) sent a letter to the Chairman of the House Appropriations Subcommittee on Energy and Water Development thanking the House for their support in prompting the "Department of Energy to meet its obligation to remove used nuclear fuel from reactor sites". The NWSC proposed three federal actions that could provide a success path going forward. They were ensuring access to the Nuclear Waste Fund for programmatic needs, removing spent nuclear fuel and high-level waste from reactor sites, and converting to an independent management organization. The letter also expressed disappointment that the Administration and the Department of Energy were not proactive in responding to the Blue ribbon Commission's report they commissioned. The next day the NWSC followed-up with a similar letter to the Chair of the Senate Appropriations Subcommittee on Energy and Water Development. Copies of both letters are attached.

13. On April 18<sup>th</sup> the Minnesota Senate voted 63-0 to pass a resolution calling upon Congress and the White House to enact legislation that would carry out the Blue Ribbon Commission's recommendations, especially with regard to consolidated interim storage. The resolution will be forwarded to President Obama, Speaker of the House Mr. Boehner, Senate Majority Leader Mr. Reid, and Secretary of Energy Dr. Chu. A copy of the resolution is attached.

14. On April 18<sup>th</sup> the Nuclear Waste Technical Review Board sent a letter to Energy Secretary Chu along with appropriate copies to the House and Senate Committees and Subcommittees having jurisdiction over the implementation and funding of the Blue Ribbon Commission's (BRC) recommendations. The Board offered comments on some of the more significant technical issues facing the Department of Energy's Working Group that was tasked by Secretary Chu to respond to the BRC's report. Comments were proffered in the following areas:

- A new consent-based approach to siting
- A new waste management organization
- Prompt efforts to develop a geologic repository
- Support for underground test facilities
- Prompt efforts to develop one or more consolidated interim storage suites
- Early preparation for large-scale transport of spent nuclear fuel and high-level waste, and
- Updating the waste classification system

A copy of the letter is attached.

15. On April 20<sup>th</sup> the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments from the petitioners (National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute) and the respondent (the Department of Energy (DOE)). The DOE was represented by the Department of Justice (DOJ). Two of the three judges seemed sympathetic to the petitioners. The tribunal questioned why the DOE, with a Nuclear Waste Fund balance in excess of \$26 billion, was collecting fees for a "program that isn't doing much". When the DOJ counsel argued that the DOE fee assessment was according to the Nuclear Waste Policy Act, one of the judges countered by asking "How can anybody say this is a reasonable interpretation of the statute?" The judge went on to say that the government's assertion was "phonier than a four dollar bill". Legal analysts conjectured that the Court will most likely remand the case back to DOE for Energy Secretary Chu to explain why DOE believes it can continue collecting fees despite no national waste program. If the Secretary's arguments are not convincing, then it is likely the Court will terminate the fees.

16. On April 23<sup>rd</sup> one of the Blue Ribbon Commission members, Dr. Per Peterson, sent a letter to Senators Feinstein and Alexander of the Senate Appropriations Committee endorsing the Subcommittee's authorization of a pilot program under the FY2013 Appropriations Bill for the Department of Energy to pursue a consent-based approach to siting a new consolidated interim waste storage facility, with priority given to stranded nuclear fuel at shut down reactors. A copy of the letter is attached.

17. On April 23<sup>rd</sup> the Nuclear Waste Strategy Coalition (NWSC) held its third conference call and updated its membership on House and Senate Appropriations activities and recent testimony and letters, the latest from the oral arguments on the Nuclear Waste Fund fee litigation, the Department of Energy's July 26<sup>th</sup> six-month report on the Blue Ribbon Commission's recommendations, correspondence letters to the congressional Office of Management and Budget and Secretary of Energy Chu, and upcoming meetings of interest. The NWSC is an ad hoc organization of state utility regulators, state attorneys general, consumer advocates, electric utilities and associate members, that includes 40 organizations in more than 30 states. Its primary focus is to protect

- ratepayer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste currently stranded at some 125 commercial, defense, research, and decommissioned sites in 39 states.
18. On April 23<sup>rd</sup> the Co-Chairs of the Blue Ribbon Commission sent a letter to Senators Feinstein and Alexander praising their efforts to propose legislation that would provide for a pilot storage program for used nuclear fuel and high-level waste. A copy of the letter is attached.
  19. On April 23<sup>rd</sup> the Chair of the House Committee on Energy and Commerce along with four Subcommittee Chairs and other House members sent a letter to the Chair of the Nuclear Regulatory Commission (NRC) as part of their oversight role of the NRC. They requested specific information on the policies and any revisions to these policies governing the Chairman of the Commission as the principle executive officer of the NRC and the voting records of all five Commissioners. The House last year investigated the Chairman for his conduct with other Commissioners and his management style with the NRC staff. A copy of the letter is attached.
  20. On April 24<sup>th</sup> Senator Heller from Nevada sent a letter to the Chairs of both the Senate and House Appropriations Committees requesting them to continue defunding the proposed Yucca Mountain nuclear waste repository and to seek better alternatives to long term storage. The Senator expressed his distrust of the federal government's ability "to appropriately manage Yucca Mountain". A copy of the letter is attached.
  21. On April 24<sup>th</sup> the Senate Committee on Appropriations announced in a press release that the Subcommittee on Energy and Water Development approved an appropriations bill that totaled \$33.361 billion with \$793 million earmarked for nuclear energy. The proposed funding legislation included a measure to begin implementing the Blue Ribbon Commission's recommendations on the storage of spent nuclear fuel and defense high-level waste. A copy of the release is attached.
  22. On April 24<sup>th</sup> the Arizona House approved legislation with a vote of 33 to 17 with 9 abstaining to bring a nuclear waste recycling and storage facility to Arizona. The bill was sent to the Senate which approved it. The legislation notified federal officials that they consider Arizona for hosting a recycling and consolidated interim storage facility. The legislation was formatted as a resolution addressed to the U.S. Congress with notifications to the President of the Senate, to the Speaker of the House and to Arizona's congressional delegation. The communities of Kingman, Holbrook, Safford and Picacho Peak in Arizona were identified as potential host sites for the nuclear waste facility since they are underlain with solid salt formations that are comparable to the Waste Isolation Pilot Plant in Carlsbad, New Mexico. Arizona joined Nye County, Nevada and Carlsbad, New Mexico as willing hosts for the nation's nuclear waste. A copy of the resolution is attached.
  23. On April 25<sup>th</sup> an amendment to the Nuclear Waste Policy Act of 1982 entitled "Yucca Utilization to Control Contamination Act" was introduced into the House by Representative Wilson from South Carolina. The legislation, if enacted, would require the President to certify within 30 days Yucca Mountain in Nevada as the designated repository for the disposal of high-level radioactive waste. If the President failed to certify, then nuclear utilities would no longer be required to make payments to the Nuclear Waste Fund and the balance of the Fund would be returned to the nuclear utilities, which would refund 75% of the monies they received to the ratepayers with the remaining 25% retained for upgrades to enhance storage and security measures at the nuclear power facilities. The bill is comparable to the one Senator Graham from South Carolina introduced in the Senate on March 8<sup>th</sup>. A copy of the legislation is attached.

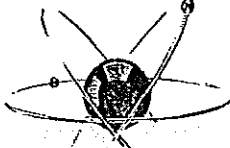
24. On April 25<sup>th</sup> the Subcommittee on Energy and Water Development approved a bill that would restore \$25 million to the Yucca Mountain licensing proceedings with \$5 million earmarked for affected local communities. Copies of the bill's cover page and appropriate pages are attached.

25. On April 26<sup>th</sup> full Committee on Appropriations approved by a vote of 28-1 the Senate Bill, S. 2465, governing the appropriation bills passed by the Agriculture and Energy Subcommittees. Senator Feinstein reported the Appropriations Bill to the full Senate for its consideration. The Bill authorized the Secretary of Energy to conduct a pilot program to license, construct, and operate one or more consolidated storage facilities for spent nuclear fuel and high-level waste, with priority for storage given to shutdown or decommissioned reactor sites. The Bill also provides within 120 days of enactment for the Secretary to issue request for proposals for cooperative agreements with local communities and states for hosting a storage facility. In addition, within 120 days after the issuance of requests for proposals the Secretary must submit to Congress a Pilot Program Plan that will estimate the annual and expected lifetime costs for a storage facility. The cost estimates will also include estimates for the financial compensation to the host State, Indian Tribe, and local government, and for future reductions in liability damages due to the Department of Energy's delays in accepting the waste. The Plan will also include any recommendations for any additional legislation to further the Pilot Program and to ensure the stored wastes will be moved to a geologic repository. Copies of the cover page and the appropriate section governing the pilot program are attached.

26. On April 27<sup>th</sup> the House Committee on Energy and Commerce sent a letter to the Chairman of the Nuclear Regulatory Commission (NRC) requesting information on the NRC's licensing requirements guiding principles to licensees for ensuring a safety conscious environment to preclude the development of a "chilling work environment" and whether or not these guiding principles apply to the Chairman's working relationship with his fellow Commissioners. The letter cited a number of instances where the Chairman's behavior was less than exemplary and that disagreements carried a risk of reprisal. The letter listed seven questions or requests for information for the Chairman to respond to. The letter was signed by the Committee Chair, three Subcommittee Chairs and 19 other House members representing 18 states. A copy of the letter is attached.

### *Other Related Topics*

1. On March 29<sup>th</sup> Representative Duncan of South Carolina introduced legislation that would halt the closure of the Yucca Mountain repository, compel the Nuclear Regulatory Commission (NRC) to complete its review and issue a determination on the license application. In addition, the legislation would remove the 77,000 metric ton limitation on nuclear waste and require the NRC to create new limits based on scientific and technical analysis of the full capacity of Yucca Mountain. The Yucca Mountain provision is part of an overall energy bill, entitled, "Energy Exploration and Production to Achieve National Demand Act". Copies of the bill's cover page and relevant pages are attached.



National  
Nuclear Fuel Cycle  
Summit

**A G E N D A**

**Monday, April 2, 2012**

***Dress for all events is business casual***

Travel Day – Complimentary golf; visit New Mexico Living Desert State Park or Carlsbad Caverns National Park

- 10:00 AM to 6:00 PM Conference Registration @ Pecos River Village Conference Center (PRVCC)
- 2:00 PM to 4:00 PM Open House – Engineered Products Division (EPD)
- 3:00 PM to 5:00 PM Open House - Carlsbad Environmental Monitoring & Research Center (CEMRC)
- 6:00 PM to 8:30 PM Opening Reception / Registration and light dinner at PRVCC  
Opening remarks by NM Congressman Stevan Pearce, Second Congressional District of New Mexico

**Tuesday, April 3, 2012**

- 7:00 AM to 8:00 AM Continental Breakfast and Conference Registration @ Walter Gerrells Performing Arts Center (Civic Center)
- 7:00 AM throughout the day booths and displays open at Civic Center
- 8:00 AM TO 9:00 AM Welcome to the National Nuclear Fuel Cycle Summit  
*Emcee: Dave Sepich, Secretary-Treasurer, Carlsbad Department of Development*  
Speakers: Dale Janway, Mayor of Carlsbad, New Mexico  
Susana Martinez, Governor of New Mexico  
Video Greeting from NM Senator Tom Udall  
Video Greeting from NM Senator Jeff Bingaman
- 9:00 AM to 10:00 AM Geopolitics of Energy – Dr. James Conca, Senior Scientist, RJ Lee Group
- BREAK**
- 10:30 AM to 12:30 PM Summit Plenary Session  
*Moderator: Bob Forrest, Former Mayor, Carlsbad, NM*  
Speakers: Former United States Senator Pete Domenici  
Dave Martin, Secretary, NM Environment Department  
Takeshi Ota, Nuclear Fuel Management Department, TEPCO
- LUNCH** Civic Center Annex

1:30 PM to 2:45 PM

Panel: Uranium Mining: Foreign Sources, ISL, Conventional

Moderator: *Norbert Rempe*

Panelists: **John Bemis**, Secretary, NM Energy, Minerals and Natural Resources

**Rick Van Horn**, Senior Vice President of Operations, Uranium Resources, Inc.

**Dr. Paul Reimus**, LANL (ISL Expert)

**Lawrence Reimann**, PE, Manager, Technical Services, Cameco Resources

2:45 PM to 3:30 PM

Panel: Nuclear Fuel Considerations: Enrichment, Fabrication, and Other Considerations

Moderator: *Earl Easton, NRC*

Panelists: **Gregory Smith**, President & CEO, URENCO

**Dr. Chris Stanek**, LANL, Lead for Materials and Performance Optimization Technical Focus Area, Consortium for Advanced Simulation of Light Water Reactors

**Dr. Rita C. Bowser**, Vice President, Major Projects, Westinghouse Electric Company, LLC

**BREAK**

3:45 PM to 4:45 PM

Panel: Waste Minimization: Low Level Waste Disposition and UF<sub>6</sub> De-conversion

Moderator: *Dr. Mark Turnbough, SBC Global*

Panelists: **Jeffrey D. Mousseau**, Senior Project Manager, Bechtel National Inc., LANL TRU Project

**Rodney A. Baltzer**, President, Waste Control Specialists, LLC

**Steve Laflin**, President and CEO, International Isotopes, Inc.

4:45 PM to 5:00 PM

Day #1 wrap-up and logistics for the evening

6:00 PM to 9:00 PM

Dinner at the PRVCC and Pecos River Boat Tours Available

**Wednesday, April 4, 2012**

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7:00 AM to 8:00 AM

Continental Breakfast and Conference Registration @ Civic Center

7:00 AM throughout the day booths and displays open at Civic Center

8:00 AM to 9:45 AM

Panel: Power Generation, New Technology, Fukushima

Moderator: *Dr. James Conca, Senior Scientist, RJ Lee Group*

Panelists: **Takeshi Ota**, Nuclear Fuel Management Department, TEPCO

**Dr. Tito Bonano**, Sandia National Labs

**David Blee**, Executive Director, Nuclear Infrastructure Council

**Pat McClure**, Los Alamos National Lab

**Dr. Rita C. Bowser**, Vice President, Major Projects, Westinghouse Electric Company, LLC

**Dr. John Parmentola**, Senior Vice President, General Atomics

**BREAK**

10:00 AM to 11:00 AM

Panel: Licensing and Regulations

Moderator: *Bob Kehrman*

Panelists: **Dr. Peter Swift**, Sandia National Labs  
**Richard M. Kacich**, Assistant Project Director, Bechtel National, Inc.  
**Gregory Hall**, Project Manager, TMI-2 ISFSI Relicensing at the INL, CH2M-WG Idaho  
**Rick Jacobi**, Jacobi Consulting

11:00 AM to 11:30 AM

Presentation: The WIPP Experience

Speaker: **Farok Sharif**, President and General Manager of Washington TRU Solutions

*LUNCH*

Civic Center Annex

12:30 AM to 1:45 PM

Panel: Social Acceptance and Community Support

Moderator: *Roxanne Lara, Eddy County Commissioner*

Panelists: **Bob Forrest**, Former Mayor, Carlsbad, NM  
**Earl Potter**, Potter & Mills, P.A.  
**Matthew Nowlin**, PhD Candidate, University of Oklahoma, Member of Hank Jenkins-Smith Research Team at the Oklahoma University Center for Applied Social Research  
**Christopher M. Timm**, PE, Vice President/Senior Project Manager, PECOS Management Services, Inc.  
**Seth Kirshenberg**, Executive Director, Energy Communities Alliance

*BREAK*

2:00 PM to 3:00 PM

Panel: Interim Storage Topics

Moderator: *Jack Volpato, Eddy County Commissioner*

Panelists: **Ken Sorenson**, Sandia National Laboratories  
**Neil Brown**, Los Alamos National Lab  
**Dr. Wes Myers**, LANL Affiliate, Nuclear Nonproliferation Division  
**Ken Brewer**, INTEC Shift Operations Manager, Spent Fuel Operations, CH2M-WG Idaho

3:00 PM to 3:45 PM

Panel: Reprocessing / Recycling

Moderator: *John Heaton, Energy Development Coordinator, City of Carlsbad*

Panelists: **Robert Edmonds**, Director of Business Development, AREVA Federal Services LLC  
**Gordon Jarvinen**, Los Alamos National Lab, Associate Director, Seaborg Institute  
**David Swale**, Vice President for Business Development, Energy Solutions

*BREAK*

4:00 PM to 5:00 PM

Panel: Disposal Options for Nuclear Waste

Moderator: *Paul Shoemaker, Sandia National Labs*

Panelists: **Dr. Frank Parker**, Vanderbilt University and Affiliate of the International Institute for Applied Systems Analysis  
**Dr. Frank Hansen**, Sandia National Labs  
**Dr. Bruce Robinson**, Los Alamos National Lab



5:00 PM to 5:30 PM Closing Remarks / Summary by John Heaton  
6:30 PM to 7:00 PM Cocktails - PRVCC  
7:00 PM Dinner / Keynote Speaker / Recognitions - PRVCC  
Speaker: **Dr. Per Peterson**, Professor and Chair, Department of Nuclear Engineering, UC/Berkeley, Member of Blue Ribbon Commission on America's Nuclear Future

**Thursday, April 5, 2012**

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7:00 AM to 3:30 PM WIPP tours  
9:00 AM to 3:00 PM Open House - CEMRC  
11:00 AM to 3:00 PM Open House - EPD  
Opportunities to visit Carlsbad Caverns National Park and NM Living Desert State Park

[www.NuclearFuelCycleSummit.org](http://www.NuclearFuelCycleSummit.org)





Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

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

April 6, 2012

Mark Langer, Clerk  
U.S. Court of Appeals, D.C. Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue N.W.  
Washington, D.C. 20001

RE: *In Re Aiken County*  
U.S. COA, D.C. Circuit No. 11-1271

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

1. Transcript of testimony of Steven Chu, Secretary of Energy, March 8, 2012, Hearing of the House Energy and Commerce Subcommittee on Energy and Power.

On page 22, Secretary Chu testifies that DOE "will abide" if this Court rules that the NRC's licensing process must resume. This is relevant to Respondents' assertions that mandamus should not issue because the NRC hearing process cannot go forward without DOE's "full participation," *see* Respondents' Brief at 39-42, and it supplements Petitioners' Reply Brief at 27 (citing similar DOE representations).

2. Letter dated March 5, 2012, from Gregory B. Jaczko, NRC Chairman, to Hon. Mark Kirk, United States Senate.

Noting there is "no formal contingency plan" for resuming the licensing process, Chairman Jaczko indicates: "With the continuing passage of time our ability to promptly re-engage in this work becomes more limited." This is relevant to Respondents' assertion that "[T]he various NRC actions have left the agency in a position to resume the proceeding should Congressional funding resume." Respondents' Brief at 53.

3. Memorandum dated March 13, 2012, from Catherine Haney, Director, Office of Nuclear Material Safety and Safeguards, to NRC Commissioners.

This memorandum indicates that NRC staff has:

Mark Langer  
April 6, 2012  
Page 2

[I]nited work on technical areas related to alternative disposal options for HLW and SNF, with the intent to revise the existing regulatory framework to prepare for future regulatory actions and possible geologic disposal sites other than Yucca Mountain. Work thus far has focused on examining different geologic media and alternative engineered barrier systems.

The memorandum suggests that NRC views the Administration's policy stance on Yucca Mountain, rather than the NWPA, as guiding its activities related to high-level waste management. See Petitioner's Brief at 34-50.

Sincerely,

*s/ Andrew A. Fitz*

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

AAF:dmm  
Enclosures

cc: All Parties of Record



# NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION

Office of Public Affairs

Telephone: 301/415-8200

Washington, D.C. 20555-0001

E-mail: [opa.resource@nrc.gov](mailto:opa.resource@nrc.gov) Site: [www.nrc.gov](http://www.nrc.gov)

Blog: <http://public-blog.nrc-gateway.gov>

No. 12-036

April 10, 2012

## OPENING REMARKS OF NRC CHAIRMAN GREGORY JACZKO AT THE BRIEFING ON THE FINAL REPORT OF THE BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE

We're meeting here today to talk with representatives of the Blue Ribbon Commission on America's Nuclear Future as well as the NRC staff. This meeting offers an important opportunity for the agency to discuss in detail the comprehensive recommendations that the Blue Ribbon Commission made to Energy Secretary Chu this past January. This report is the culmination of nearly two years of work by the Commission in developing recommendations for creating a safe, long-term solution for managing and disposing of the nation's spent nuclear fuel and high-level radioactive waste.

We are very pleased to have General Brent Scowcroft here today to talk about the report. It is important to hear directly from the Blue Ribbon Commission on its eight key recommendations and their possible implications. Many of these recommendations require action by the Administration and Congress, but the path and progress of these efforts will have significant implications on the Nuclear Regulatory Commission. The more we know going forward, the better we can plan ahead. The issues of permanent storage for spent nuclear fuel are very important for the country, and we look forward to a very interesting discussion today.

###

News releases are available through a free *Listserv* subscription or by clicking on the EMAIL UPDATES link on the NRC homepage ([www.nrc.gov](http://www.nrc.gov)). E-mail notifications are sent to subscribers when news releases are posted to NRC's website. For the latest news, follow the NRC on [www.twitter.com/NRCgov](http://www.twitter.com/NRCgov).

## SCHEDULING NOTE

**Title:** BRIEFING ON THE FINAL REPORT OF THE BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE (Public)

**Purpose:** To provide the Commission with a discussion of Blue Ribbon Commission recommendations on national policies for managing the back-end of the nuclear fuel cycle having potential implications for NRC regulatory programs.

**Scheduled:** April 10, 2012  
9:00 am

**Duration:** Approx. 3 hours

**Location:** Commissioners' Conference Room, 1<sup>st</sup> fl OWFN

**Participants:** **Presentation**

**Blue Ribbon Commission** **15 mins.\***

**Brent Scowcroft**, Lieutenant General, USAF (Ret.), and Co-Chair of the Blue Ribbon Commission

**Phil Sharp**, President, Resources for the Future, Former Congressman from Indiana, and Member of the Blue Ribbon Commission

Topic: Overview of Blue Ribbon Commission recommendations that affect NRC's regulatory framework:

- Technical alternatives to current fuel-cycle approaches that could influence spent fuel storage and disposal.
- Storing spent nuclear fuel and high level waste while one or more final disposal locations are established.
- Establishing one or more disposal sites for high level radioactive wastes.

**Discussion with the Commission** **50 mins.**

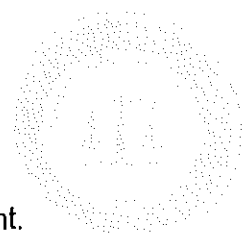
**Break** **5 mins.**

**NRC Staff Panel** **40 mins.\***

**Michael F. Weber**, Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs

**Catherine Haney**, Director, Office of Nuclear Material Safety and Safeguards

Topic: Introduction.



**Alicia Mullins**, Project Manager, Office of Nuclear Material Safety and Safeguards

Topic: Key messages and cross-cutting implications of Blue Ribbon Commission final recommendations for improving stakeholder engagement.

**Brittain Hill**, Sr. Advisor-Science, Office of Nuclear Material Safety and Safeguards

Topic: Implications of Blue Ribbon Commission final recommendations for ongoing and near-term NRC programs for storage, high-level waste disposal, fuel cycle and security regulation.

**Earl Easton**, Sr. Advisor-Transportation, Office of Nuclear Material Safety and Safeguards

Topic: Implications of Blue Ribbon Commission final recommendations for ongoing and near-term NRC programs for transportation regulation.

**Commission Q & A**

**50 mins.**

**Discussion – Wrap-up**

**5 mins.**

\*For presentation only and does not include time for Commission Q & A's



N A R U C  
National Association of Regulatory Utility Commissioners

April 11, 2012

Hon. Jeffrey Zients  
Acting Director  
The Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

**Re: Fulfilling Government's Obligations on Nuclear Waste**

Dear Mr. Zients:

When President Obama determined in 2009 that development of a geologic repository at Yucca Mountain Nevada was "not a workable option" despite decades of evaluation and \$15 billion having already been spent, the Department of Energy took a number of steps toward implementing that change of direction:

- Eliminated the nuclear waste program management office within DOE
- Shut down the facilities at Yucca Mountain and cancelled contracts, resulting in hundreds of jobs lost in Nevada
- Restricting funding in the FY 2010 Budget to site closure (and eliminated in FY 2011 and 2012 requests)
- Sought to withdraw the repository construction license application from review by the Nuclear Regulatory Commission
- By President Obama's January 29, 2010 Memorandum, formed the Blue Ribbon Commission on America's Nuclear Future to review "all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel and nuclear waste."

OMB, prematurely in our view, included the Yucca Mountain Repository Program in the Terminations, Reductions and Savings (page 68) section of the FY 2010 Budget, as though there was not to be a replacement program.

Energy Secretary Steven Chu chose a well-balanced and distinguished membership of the Blue Ribbon which conducted an open and comprehensive review for waste disposition (although he instructed them not to consider Yucca Mountain or any other site for a repository.) The Commission issued its final report to Secretary Chu on January 26, 2012 and the co-chairs testified to several committees of Congress on the report.

Even before the final report was issued, Commission Co-Chairs Lee Hamilton and Brent Scowcroft wrote to the President on December 12, 2011 appealing to have the FY 2013 Budget include a number of related actions having to do with fee payments paid by commercial nuclear power plant owners to the Nuclear Waste Fund. These steps were referred to in the letter this way:

***“Unless action is taken in the near-term to fix the way these fees are treated in the federal budget, the nuclear waste strategy we recommend cannot succeed.”***

In other words, after two years of considering the complex technical, societal, environmental, legal, regulatory and other aspects of the nuclear waste program, the Commission takes the extraordinary step of asking the President to make the money already collected since 1983 available for its intended purpose. The letter refers to the remedy that is fully explained in chapter 8 of the BRC Final Report.

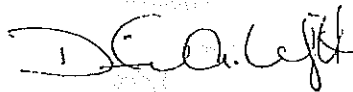
Research by the Commission indicated that the Secretary of Energy has administrative authority to modify contracts to enable the changes recommended but that OMB should consult with the appropriate budget committees of Congress and the Congressional Budget Office such that as early as FY 2013 the annual fee receipts can directly offset appropriations.

We were disappointed that, aside from \$10 million for what is described as “BRC-related” research and development, the President’s Budget contains no funding request for nuclear waste program redirection—meaning the only repository approved by law (P.L. 107-200) is effectively abandoned and the earliest any funds can be appropriated for any other waste activity is October 2013. Meanwhile, the Government collects approximately \$750 million in fees for disposal that is instead credited for deficit reduction while showing a paper balance of \$26.7 billion in the Nuclear Waste Fund, according to the latest DOE published reports, that remains locked up due to inability to appropriate funds.

While no one is seeking the release now of the \$26.7 billion—but eventually it is being counted on per the Nuclear Waste Policy Act—the BRC makes the more modest appeal to have the fees collected be re-classified as discretionary offsetting collections and the balance be deposited in supervised irrevocable trust accounts as agreed in contracts between DOE and the nuclear plant owners. What remains is for OMB or DOE with OMB support to take the proposal and seek the necessary concurrences from Congress and CBO.

The President’s Memorandum calling for the Blue Ribbon Commission says the Administration is committed to meeting the Government’s obligation to dispose of our Nation’s used nuclear material. We respectfully request that the first step be taken in that direction by OMB and/or DOE. Fixing the funding problem is essential in all BRC recommended scenarios.

Sincerely,



David A. Wright  
President

Cc: Secretary of Energy



Congress of the United States  
Washington, DC 20515

April 11, 2012

**Become an Original Cosponsor of Legislation to Assist States and  
Ratepayers Burdened by the Administration's Decision to Halt Yucca  
Mountain**

Dear Colleague,

I would like to invite you to be an original cosponsor of legislation that requires the President to certify, within 30 days, that the Yucca Mountain site remains the designated site for the development of a repository for the disposal of high-level radioactive waste.

Under this legislation, if the President fails to certify Yucca Mountain as the selected site:

- Utility Companies across the country would no longer be forced to make payments to the Department of Energy to fund the Nuclear Trust Fund (this results in lower utility rates for ratepayers)
- The entity (utility company) would receive the aggregate, including interest, of the deposits it had contributed to the Nuclear Trust Fund (75% of those funds would be used to reduce the rates for ratepayers and 25% would be used to update the entity's nuclear power infrastructure)
- No later than January 1, 2017, Defense Waste **MUST** begin to be moved from the states it is currently located within to Yucca Mountain. If this requirement is not met, the Department of Energy will be required to pay \$1,000,000 a day (up to \$100,000,000 a year) to the states holding the Waste. This money is to be used to help offset the loss in community investment and to mitigate public health risks posed by the nuclear waste.

Hard working Americans deserve to have the money they paid towards constructing a national repository at Yucca Mountain honored. If the President refuses to certify Yucca Mountain as a national repository for high-level radioactive waste, DOE should return the money it has collected from ratepayers to finance the Site.

This bill ensures that ratepayers are compensated for the monies they have contributed. Additionally, the legislation takes measures to see that states are compensated for Defense Waste they are currently safeguarding which should also be going to Yucca Mountain.

If you have any questions, need additional information, or would like to be an original cosponsor, please contact Baker Elmore at [Baker.Elmore@mail.house.gov](mailto:Baker.Elmore@mail.house.gov).

Sincerely,



Joe Wilson  
Member of Congress

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT



**No. 11-1271**

**September Term 2011**

**NRC-NWPA**

**Filed On: April 17, 2012 [1369214]**

In re: Aiken County, et al.,

Petitioners

-----  
State of Nevada,  
Intervenor

**ORDER**

It is **ORDERED**, on the court's own motion, that the following times are allotted for the oral argument of this case scheduled for May 02, 2012, at 9:30 A.M.:

Petitioners -- 20 Minutes

Respondent -- 20 Minutes

The panel considering this case will consist of Circuit Judges Garland and Kavanaugh, and Senior Circuit Judge Randolph.

Form 72, which may be accessed through the link on this order, must be completed and returned to the Clerk's office by April 25, 2012.

**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)**



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

SCHEDULED FOR ORAL ARGUMENT MAY 2, 2012

OFFICE OF THE  
GENERAL COUNSEL

April 17, 2012

Mark Langer, Clerk  
United State Court of Appeals  
for the District of Columbia Circuit  
United States Courthouse  
333 Constitution Avenue, N.W.  
Washington D.C. 20001

RE: *In re Aiken County, et al.*, No. 11-1271 (scheduled for Oral argument May 2, 2012).

Dear Sir:

Pursuant to FRAP 28(j), Respondent NRC replies to Petitioners' letter dated April 6, 2012.

Petitioners state that Secretary Chu testified before Congress that DOE will "abide by" any decision of this Court and will "pursue" the Yucca Mountain license if this Court so orders. Government agencies must, of course, comply with court orders. But this Court presumably will issue no such order to DOE in this case because DOE is not a party. In any event, as government counsel noted at oral argument during the previous *Aiken County* lawsuit, DOE's resuming pursuit of a Yucca Mountain license is, of necessity, "subject to funding[.]" JA101.

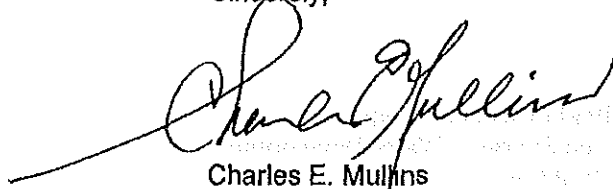
Petitioners imply that Chairman Jaczko's statement that there is "no formal contingency plan" to resume the licensing process undercuts the statement in our brief (p.53) that NRC is in a position to resume the proceeding if Congress resumes the necessary funding. But the absence of a formal plan would not prevent NRC from resuming the proceeding; instead, Chairman Jaczko merely offered the unremarkable observation that Congressional delay in resuming funding would delay NRC's resuming the proceeding.

Obviously, Congressional funding is a prerequisite to agency action. As we noted in our brief (pp.51-53), it was Congress' withdrawal of funding that forced NRC to close the proceeding. Indeed, as early as 2010, Chairman Jaczko informed Congress that given severely declining appropriations, terminating review of the license application was "consistent with NRC's obligation to spend funds prudently ...." See Letter to Representative Sensenbrenner (Oct. 27, 2010), Enclosure, p.1 (attached).

Petitioners also question the NRC staff's current review of "alternative disposal methods for HLW and SNF." But with the Yucca Mountain proceeding de-funded by Congress, NRC has no option but to turn its attention to "alternative disposal methods[.]"

In a recent decision discussing Congress' "power of the purse," this Court reinforced a fundamental point in our brief (pp.43-51) -- NRC cannot spend money for the Yucca Mountain proceeding unless Congress appropriates it. See *Department of the Navy v. FLRA*, 665 F.3d 1339, 1346-48 (D.C. Cir. 2012). "Congress's control over federal appropriations is absolute." *Id.* at 1347 (internal quotation omitted).

Sincerely,



Charles E. Mullins  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission

Enclosure: Letter from Gregory B. Jaczko (NRC) to Rep. Jim Sensenbrenner (Oct. 27, 2010) with responses to questions..

Filed by EC/CMF

**David A. Wright, Chairman**  
Vice-Chairman, South Carolina Public Service Commission

**Renze Hoeksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Commissioner, Minnesota Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic

**Greg R. White, Communications**  
Commissioner, Michigan Public Service Commission

# NWSC

## Nuclear Waste Strategy Coalition

April 17, 2012

The Honorable Rodney P. Frelinghuysen, Chairman  
Appropriations Subcommittee on Energy & Water Development  
2362-B Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Frelinghuysen:

The Nuclear Waste Strategy Coalition (NWSC) thanks you for your continued leadership to ensure that nuclear waste disposal issues are not overlooked during the appropriations process. In the 2013 Energy and Water Appropriations bill released today, the House has once again supported prompt action by the Department of Energy (DOE) to meet its obligation to remove used nuclear fuel from reactor sites in our states and communities. Additionally, we seek your help to ensure that funds are appropriated for relatively small – but enormously significant and timely – steps toward that goal as explained below.

The NWSC continues to be concerned that DOE officials have not embraced their responsibility to manage the nation's nuclear waste program, and if they have, their approach does not reflect the sense of urgency that many in Congress, the stakeholder community, and the Administration's own Blue Ribbon Commission on America's Nuclear Future (BRC) possess. You and your colleagues have repeatedly expressed the need for action in the near term that would facilitate the more timely removal of nuclear waste. The BRC, a renowned bipartisan group assembled by the Administration to study issues pertaining to the back end of the nuclear fuel cycle, likewise urged DOE to act with all due speed. Based on recent news reports, some BRC members appear to share our frustration that more has not been done in this critical period to carry out the thoughtful recommendations they spent years forming. If DOE refuses to run with the BRC recommendations and request appropriations consistent with near-term action needs, the BRC report is at risk of becoming little more than another report on the shelf.

Sharing Congress' sense of urgency and consistent with the BRC, the NWSC proposes a number of actions that can be implemented in the near term to demonstrate the federal government's commitment to resolution of the unnecessary and costly dilemma with respect to used fuel management. We ask that Congress – via the FY 2013 appropriations process – support the BRC-recommended near-term actions associated with:

- ensuring access to the Nuclear Waste Fund (NWF) for program needs as originally intended;
- removing spent nuclear fuel and high-level radioactive waste from commercial plant sites in a timely manner, which encompasses both centralized interim storage and transportation; and
- transitioning to an independent waste management organization.

We also ask that DOE be held accountable to deliver an Action Plan by July 26, 2012, that reflects a sense of urgency and takes ownership for the country's high-level radioactive waste program. While questions with respect to any large-scale federal program reform are to be expected, we are dismayed that the

The Honorable Rodney P. Frelinghuysen

April 17, 2012

Page 2

Administration, and DOE in particular, did not proactively plan for addressing a report that it commissioned. We note two relevant items to keep in mind:

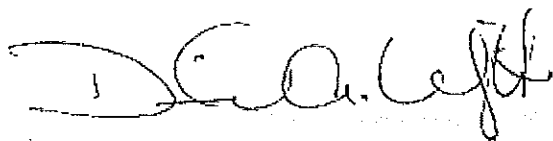
1. The BRC's draft report was issued July 2011 in much the same form as its final report.
2. On December 12, 2011, BRC Co-Chairmen Lee Hamilton and Brent Scowcroft sent a letter to the President, requesting that his FY 2013 baseline budget projections reflect "actions that can and should be taken soon to provide assured access to utility waste disposal fees for their intended purpose." They ominously added, "Unless action is taken in the near-term to fix the way these fees are treated in the federal budget, the nuclear waste strategy we recommend cannot succeed."

Therefore, by the July 26, 2012, due date for submitting its BRC-related strategy, DOE will have had three days short of an entire year to develop plans in response to the BRC recommendations. As you are aware, NWF reform was not addressed in the Administration's FY 2013 budget. Along with consumer payments into the NWF, such missed opportunities continue to stack up. We need your help to make these issues a priority at DOE.

Finally, as acknowledged by provisions in the House 2013 Energy and Water Appropriations bill, Yucca Mountain remains the law of the land. While we continue to oppose the withdrawal of the license application for the repository there, we acknowledge that the important matter is before the court, that an additional repository will be needed under existing law, and that we still have a need for interim storage until a repository is opened. Per the March 8, 2012, testimony of Secretary Chu before the House Subcommittee on Energy & Power, DOE "will abide" if the court orders resumption of the NRC's licensing process. Both DOE and NRC should have executable plans in place to resume their respective roles regarding the Yucca Mountain repository license application immediately upon such court order. Therefore, we urge you and your colleagues to request a specific plan, including the resources required for completing the Yucca Mountain licensing process, assuming the courts rule the license application cannot be withdrawn.

Thank you for your attention to these important issues and for your consideration of our requests. Please do not hesitate to contact our Executive Director, Katrina McMurrian, for any follow-up (contact information below) or if our organization may otherwise be of assistance to you or your staff. With respect to any future House hearings or roundtables on nuclear waste-related topics, we respectfully ask that you keep our organization in mind to participate.

Sincerely,



David A. Wright  
Chairman, Nuclear Waste Strategy Coalition  
Vice-Chairman, South Carolina Public Service Commission

*The Nuclear Waste Strategy Coalition is an ad hoc organization representing the collective interests of state utility regulators, state attorneys general, consumer advocates, electric utilities, and associate members, on nuclear waste policy matters. NWSC's primary focus is to protect ratepayer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste currently stranded at some 125 commercial, defense, research, and decommissioned sites in 39 states.*

**David A. Wright, Chairman**  
Vice-Chairman, South Carolina Public Service Commission

**Renze Hoeksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Commissioner, Minnesota Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic

**Greg R. White, Communications**  
Commissioner, Michigan Public Service Commission

# NWSC

## Nuclear Waste Strategy Coalition

April 18, 2012

The Honorable Dianne Feinstein, Chairman  
Senate Appropriations Subcommittee on Energy & Water Development  
184 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Feinstein:

The Nuclear Waste Strategy Coalition (NWSC) thanks you for your leadership in calling for prompt action by the Department of Energy (DOE) to meet its obligation to remove used nuclear fuel from reactor sites in our states and communities. Additionally, we seek your help to ensure that an opportunity is not missed to appropriate funds in FY 2013 for relatively small – but enormously significant – steps toward that goal.

The NWSC continues to be concerned that DOE officials have not embraced their responsibility to manage the nation's nuclear waste program, and if they have, their approach does not reflect the sense of urgency that many in Congress, the stakeholder community, and the Administration's own Blue Ribbon Commission on America's Nuclear Future (BRC) possess. At the Senate Appropriations Energy & Water Development Subcommittee's hearing on DOE's budget, you and your colleagues stressed similar concerns to Secretary Chu. Your message that day, as well as in your February 29<sup>th</sup> letter to Secretary Chu, clearly expressed the need for action in the near term that would facilitate the more timely removal of nuclear waste from California and other states. The BRC, a renowned bipartisan group assembled by the Administration to study issues pertaining to the back end of the nuclear fuel cycle, likewise urged DOE to act with all due speed. Based on recent news reports, some BRC members appear to share our frustration that more has not been done in this critical period to carry out the thoughtful recommendations they spent years forming. If DOE refuses to run with the BRC recommendations and request appropriations consistent with near-term action needs, the BRC report is at risk of becoming little more than another report on the shelf.

Sharing Congress' sense of urgency and consistent with the BRC, the NWSC proposes a number of actions that can be implemented in the near term to demonstrate the federal government's commitment to resolution of the unnecessary and costly dilemma with respect to used fuel management. We ask that Congress – via the FY 2013 appropriations process – support the BRC-recommended near-term actions associated with:

- ensuring access to the Nuclear Waste Fund (NWF) for program needs as originally intended;
- removing spent nuclear fuel and high-level radioactive waste from commercial plant sites in a timely manner, which encompasses both centralized interim storage and transportation; and
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We also ask that DOE be held accountable to deliver an Action Plan by July 26, 2012, that reflects a sense of urgency and takes ownership for the country's high-level radioactive waste program. While questions with respect to any large-scale federal program reform are to be expected, we are dismayed that the

The Honorable Dianne Feinstein

April 18, 2012

Page 2

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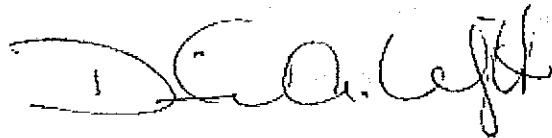
1. The BRC's draft report was issued July 2011 in much the same form as its final report.
2. On December 12, 2011, BRC Co-Chairmen Lee Hamilton and Brent Scowcroft sent a letter to the President, requesting that his FY 2013 baseline budget projections reflect "actions that can and should be taken soon to provide assured access to utility waste disposal fees for their intended purpose." They ominously added, "Unless action is taken in the near-term to fix the way these fees are treated in the federal budget, the nuclear waste strategy we recommend cannot succeed."
3. Your February 29, 2012 letter to Secretary Chu put DOE on notice of the nature of your inquiries to follow at your March 14, 2012, budget hearing, at which Secretary Chu testified.

Therefore, by the July 26, 2012, due date for submitting its BRC-related strategy, DOE will have had three days short of an entire year to develop plans in response to the BRC recommendations. As you are aware, NWF reform was not addressed in the Administration's FY 2013 budget. Finally, when Secretary Chu appeared before your subcommittee on March 14<sup>th</sup>, he shared no details with you or any other Senators who were focused on how Congress might assist DOE in plans to get used fuel moving. Along with consumer payments into the NWF, such missed opportunities continue to stack up. We need your help to make these issues a priority at DOE.

Finally, Yucca Mountain remains the law of the land. While we continue to oppose the withdrawal of the license application for the repository there, we acknowledge that the important matter is before the court, that an additional repository will be needed under existing law, and that we still have a need for interim storage until a repository is opened. Per the March 8, 2012, testimony of Secretary Chu before the House Subcommittee on Energy & Power, DOE "will abide" if the court orders resumption of the NRC's licensing process. Both DOE and NRC should have executable plans in place to resume their respective roles regarding the Yucca Mountain repository license application immediately upon such court order. Therefore, we urge you and your colleagues to request a specific plan, including the resources required for completing the Yucca Mountain licensing process, assuming the courts rule the license application cannot be withdrawn.

Thank you for your attention to these important issues and for your consideration of our requests. Please do not hesitate to contact our Executive Director, Katrina McMurrian, for any follow-up (contact information below) or if our organization may otherwise be of assistance to you or your staff. With respect to any future Senate hearings or roundtables on nuclear waste-related topics, we respectfully ask that you keep our organization in mind to participate.

Sincerely,



David A. Wright  
Chairman, Nuclear Waste Strategy Coalition  
Vice-Chairman, South Carolina Public Service Commission

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S.F. No. 2187, 2nd Engrossment - 87th Legislative Session (2011-2012) Posted on Mar 29, 2012

*1.1A* resolution*1.2* memorializing the President and Congress to enact legislation and take other federal*1.3* government action related to interim storage of used nuclear fuel.*1.4* WHEREAS, nuclear utility ratepayers in Minnesota and throughout the United States have*1.5* contributed more than \$30,000,000,000 in fees and interest, as mandated under the Nuclear Waste*1.6* Policy Act of 1982 (NWPA), for the purpose of removing used nuclear fuel from commercial*1.7* reactor sites; and*1.8* WHEREAS, the federal government failed to satisfy the NWPA's statutory requirement*1.9* to begin accepting used nuclear fuel in 1998 and has failed to meet the terms of its contracts*1.10* with United States nuclear plant operators; and*1.11* WHEREAS, the 104 operating United States commercial reactors have accumulated some*1.12* 77,000 metric tons of used nuclear fuel; and*1.13* WHEREAS, the current administration has terminated and Congress has ceased funding of*1.14* all activities related to the license review or further development of a permanent central disposal*1.15* repository at the Yucca Mountain Project in Nevada, which has been the federal government's*1.16* only intended destination for used commercial fuel; and*1.17* WHEREAS, there are lawsuits attempting to compel the federal government to meet its*1.18* obligations under the NWPA; and*1.19* WHEREAS, the current administration in January, 2010, appointed a Blue Ribbon*1.20* Commission on America's Nuclear Future comprised of distinguished American scientists and*1.21* nuclear policymakers to review various alternative options and make recommendations for future*1.22* safe management of United States commercial used nuclear fuel; and*2.1* WHEREAS, the Blue Ribbon Commission has recommended an integrated nuclear fuel*2.2* management program incorporating: (1) development of one or more Nuclear Regulatory*2.3* Commission-licensed (NRC) private or government-owned centralized interim storage facilities*2.4* in communities in states that would willingly host such facilities; (2) continued public*2.5* and private sector research, development, and deployment of used fuel and nuclear waste*2.6* recycling technologies to close the nuclear fuel cycle in a safe, environmentally responsible,*2.7* proliferation-resistant, and economically viable process; and (3) assured access by the nuclear*2.8* waste program to revenues generated by consumers' continued payments and to existing balances*2.9* in the Nuclear Waste Fund; NOW, THEREFORE,*2.10* BE IT RESOLVED by the legislature of the State of Minnesota that it calls on the President*2.11* Obama Administration and the United States Congress to:*2.12* (1) adopt legislation enabling the construction of one or more centralized interim fuel*2.13* storage facilities through directives to the United States Department of Energy and through*2.14* incentives to interested communities funded through access to the accumulated Nuclear Waste*2.15* Fund;*2.16* (2) recognize there are willing host communities and states that are ready to voluntarily*2.17* accept used fuel;*2.18* (3) assure access by the Nuclear Waste Management program to the revenues generated by*2.19* consumers' continuing fee payments and to the significant balance in the Nuclear Waste Fund; and*2.20* (4) enable one or more NRC-licensed private interim storage facilities to meet this public*2.21* policy need of the United States.

- 2.22BE IT FURTHER RESOLVED that the Secretary of State of Minnesota is directed to
- 2.23prepare copies of this memorial and transmit them to the President of the United States, the
- 2.24Speaker of the United States House of Representatives, the Majority Leader of the United States
- 2.25Senate, and the Secretary of the United States Department of Energy.

Please direct all comments concerning issues or legislation to your House Member or State Senator.

For Legislative Staff or for directions to the Capitol, visit the Contact Us page.

General questions or comments.

last updated: 02/06/2012

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

April 18, 2012

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

Dear Secretary Chu:

The Nuclear Waste Technical Review Board (the Board) has read with considerable interest the final report of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The report addresses a number of major issues that are important for our nation to succeed in answering the question of what we are going to do with our nuclear waste. The Commission conducted a comprehensive review of the problem and produced a frank and informative report on the many dimensions of a workable solution. The Board endorses the Commission's commitment to independent technical review, and believes that public trust in the storage and repository siting process can be enhanced by demonstrating that policy decisions have a firm and independently reviewed technical basis.

We understand that you have now appointed a Working Group to advise you on how DOE should respond to the recommendations in the report. Policies regarding nuclear waste must inherently involve questions of a technical nature. For the consideration of the DOE Working Group, we offer comments here on some of the more salient technical issues that we believe can affect the implementation of policies and the realization of plans to manage the nation's nuclear waste.

#### **A New Consent-Based Approach to Siting Nuclear Waste Management Facilities**

The Board has for some time had a keen interest in the domestic and international experience with consent-based siting approaches for nuclear waste storage and disposal facilities. We have also lamented, in the Commission's words, "the erosion of trust in the federal government's nuclear waste management program," which has certainly complicated finding technical solutions to the nuclear waste problem in our country. One aspect of establishing trust is to ensure a thorough consideration of technical issues that can guide the site-selection process. The establishment of site-independent safety criteria must be based on informed technical considerations, including technical lessons learned from both successful and failed projects in the U.S. and abroad.

Lessons learned from U.S. and international experience should be taken into account in developing guidelines, for siting, for the solicitation of volunteer sites, and for integrating the overall process. In particular, lessons learned from the failure of the nuclear waste negotiator approach should inform any consent-based volunteer-siting process.

### **A New Organization to Implement the Waste Management Program**

The Board encourages the pursuit of the idea of "a new, single-purpose organization to provide stability, focus, and credibility." The Board has been concerned for some time with the lack of stability and, hence, of technical focus that results from management changes that accompany inevitable changes in the federal administration. This seemingly non-technical aspect of the program can in fact have severe implications for the technical direction and emphasis of a developing waste management program, which we see as being fundamentally one of science and engineering. We agree that the issues that the Commission defines regarding organizational structure require attention. We would add that rigorous peer review of technical aspects of the project must be part of the structure as is clear from the broad international experience to date.

The Commission declined to comment on the issue of comingling of waste from defense programs with the spent nuclear fuel from commercial power reactors at a single repository site. Nevertheless, we think that this is a technical issue that deserves consideration as a new organizational structure is considered. Because spent-fuel and high-level wastes are quite different in volume and activity, we think that a technical study to determine whether to separate commercial spent-fuel from defense and DOE wastes should be expeditiously completed in order to help establish a clear vision and mission for the organization charged with implementing the waste storage and disposal program.

### **Prompt Efforts to Develop a New Geologic Disposal Facility**

The Board agrees with the Commission's position that disposal must be pursued with the same vigor as interim storage, because both need to be done in order to provide confidence that there is a solid integrated technical solution to the problem of the disposition of nuclear waste. One item that should be addressed expeditiously is the establishment of clear guidelines for identifying, and also potentially disqualifying, possible locations for one or more repositories. This work can draw on information from a variety of sources including geological information, census data, transportation networks, and so forth. In addition, the experience gained in other national programs should be carefully considered.

However, we are not particularly convinced that a demonstration of bore-hole disposal should be given the same priority as identifying, characterizing, designing, and developing a mined disposal site (to the point of a licensed demonstration project). The bore-hole concept has simply not yet been vetted technically to the extent that deep-mined geological disposal has. Furthermore, the need to disassemble fuel assemblies to implement bore-hole disposal would result in unnecessary worker exposure, and a decision to use bore holes might preempt retrievability options at a later time.

Another issue that the Commission recognized was the need to establish a new standard for repositories, because 10 CFR 63 is specific to Yucca Mountain. Specific choices related to the time period(s) chosen for demonstrating compliance with a standard are policy decisions, but we think scientific insights can be instructive and should be included in consideration of new standards and regulations.<sup>1</sup> Although one can greatly benefit from the use of probabilistic risk assessment methodologies in developing strategies for the safe disposal of highly radioactive waste, the length of the compliance period may well modify how these methods are applied. As an example, surface facilities

<sup>1</sup> For example, the Advisory Committee on Nuclear Waste issued a letter on the time of compliance (TOC) following a workshop that involved multiple parties (Letter of November 14 1996 to Chairman Shirley Jackson), in which it was stated that, "The dilemma in developing a TOC is that the time span must be sufficiently long to permit evaluation of potential processes and events leading to the loss of integrity of the repository and transport of radionuclides to the critical population. Yet the period must be short enough that inherent uncertainties in processes and events and in the biosphere and critical population group, which will increase with time, will not invalidate the results of the evaluation."

that operate for 100 years can use methods of analysis presently applied to conventional reactor-type standards, while a geologic repository, for which compliance periods stretch to hundreds of thousands of years, may require additional considerations.

#### **Support for Underground Test Facilities**

From a technical point of view, the Board generally supports the development of underground research laboratories as a preliminary step in designing and constructing a full-scale geologic repository. International experience has demonstrated the scientific and public acceptance benefits of the concept of geologic disposal. The ideal scenario from the point of view of economics and timing is a laboratory at a site that has been selected on the basis of a comprehensive siting process, the suitability of which is confirmed with strong scientific evidence from a variety of sources, including the underground research laboratory. To be sure there are circumstances where it may be expedient to use a surrogate site for an underground research laboratory that is an analog to the actual site or sites selected. There is the possibility that social or other reasons may exist for not locating an underground laboratory at a potential repository site. There is also the possibility that by the time a site is selected in the U.S. sufficient underground research exists in different geological media that a convincing scientific and technical basis can be developed to support a site without the need for a site-specific laboratory. The key point is that the siting process, whether it is for a repository, a laboratory, a pilot repository with a laboratory, or the combination of a laboratory and a full-scale repository, must make the intentions explicitly clear and acceptable to all stakeholders prior to project initiation.

#### **Prompt Efforts to Develop One or More Consolidated Interim Storage Sites**

Spent fuel is presently being stored at reactor sites. The BRC recommended, for several reasons, that this spent fuel be moved to one or more centralized interim storage sites. With the curtailment of the Yucca Mountain Project, the appeal for this interim step increases since it is not clear when a disposal site might be available. This is particularly true for decommissioned sites where the only remaining vestige of nuclear power operation is the spent fuel casks on secure pads. In the spirit of a pilot-scale approach, the Board recommends that an interim site be used for the early demonstration of the safe shipment of spent fuel to a centralized interim storage site. This would provide early technical input regarding the implementation of a much larger transportation program described below. Logical site choices with the consent of the states and local population would include national laboratories, DOE facilities, and former military sites where security and infrastructure would already be present. The interim nature of this storage would be evidenced by moving this spent fuel to the centralized storage facility when it becomes operational in the future.

#### **Early Preparation for the Eventual Large-Scale Transport of Spent Nuclear Fuel and High-Level Waste to Consolidated Storage and Disposal Facilities**

Regarding transportation, which is a near-term need for centralized interim storage and a mid-term need for repository disposal, the Board does not believe that the Commission report goes far enough. In order to handle the massive shipments of spent fuel that will be involved and to implement the needed infrastructure in terms of rail cars and handling systems, work needs to be started now. The technical challenges of upgrading existing rail lines have been evident in just the maintenance of the infamous Northeast Corridor to carry high-speed rail traffic. Different but analogous technical challenges can be expected to accompany the adaptation of existing rights-of-way to accommodate nuclear waste shipments, even if they will not travel at commuter speeds. The construction of new rail lines where none at all currently exist might present even greater technical challenges. The early selection of a centralized interim storage site could be the starting point for developing strategies and methods for the transport of highly radioactive waste to a geologic repository. The Private Fuel Storage Project has done much of this work already and that should be used as a basis. A solid technical understanding of the capacities and

limitations of the existing rail network and the possibilities for expanding it may have profound effects on where candidate sites can reasonably be located.

We support the recommendation that DOE should make public its suite of preferred routes for shipment of nuclear waste, because independent of site location this can reveal technical challenges involved (such as possible pinch points) and encourage open discussion of innovative technical solutions. We also support strongly the development of a technical basis for burn-up credit, i.e., the taking into account the reduction in reactivity that results from nuclear fuel having been used in a reactor, because this will greatly simplify all aspects of storage, transportation, and disposal. Finally, while the Commission has addressed transportation in its report, it does not address the difficult process of dealing with multiple state agencies for the transportation of spent fuel across states. The merits of having initial and daily inspections designed to insure the safety of the shipments augmented by detailed inspections at each state border deserve discussion that includes technical issues that may help shape risk-informed regulations.

#### Updating the Waste Classification System

Lastly, we support the need to review the outdated waste classification system and make it based on the form and activity of the waste rather than its source. Currently there is some waste generated at DOE sites that is orphaned in that there is no regulatory path for disposal. Rationalization of the waste classification system is needed to resolve this problem.

In summary, the Board believes that there are many technical issues that should be part of the discussions of the Working Group. Our aim in this letter is to convey what the Board considers to be some of the most important issues. Thank you for considering our thoughts on these important matters.

Sincerely,

{Signed by}

B. John Garrick  
Chairman

cc:

Subcommittee on Energy and Water Development, Committee on Appropriations, U.S. Senate  
Committee on Energy and Natural Resources, U.S. Senate  
Subcommittee on Clean Air and Nuclear Safety, Committee on Environment and Public Works,  
U.S. Senate  
Subcommittee on Energy and Water Development, Committee on Appropriations,  
U.S. House of Representatives  
Subcommittee on Environment and the Economy, Committee on Energy and Commerce,  
U.S. House of Representatives  
Committee on Science, Space, and Technology, U.S. House of Representatives



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BERKELEY, CALIFORNIA 94720-1730

April 23, 2012

Senator Diane Feinstein  
Senator Lamar Alexander  
Senate Committee on Appropriations  
Subcommittee on Energy and Water Development  
Room S 128, The Capitol  
Washington, DC 20510

Dear Senators Feinstein and Alexander,

I am writing as one of the members of the Blue Ribbon Commission on America's Nuclear Future, to endorse congressional action to authorize a pilot program in the FY13 Energy and Water Appropriations Bill, under which the Department of Energy could use a consent based approach to site new consolidated waste storage capacity, with priority given to stranded nuclear waste at shut down reactors.

The BRC had recommended this near-term action because it will allow the DOE to begin to perform on the obligations it holds under its contracts with utilities and thus reduce future taxpayer liabilities, will allow these shutdown sites to be used for more beneficial purposes, and will generate a base of experience, at smaller scale, on safe spent fuel transportation methods that will eventually need to be implemented at much larger scale.

As I was able to discuss with Senator Feinstein when we met last November, our nation now has the opportunity to fundamentally rethink our strategy for managing spent fuel and high-level waste. The development of consolidated storage, along with geologic disposal, brings significant technical benefits, and equally important, it provides a means to distribute the burdens, and benefits, of these important activities more equitably. Early action, which for consolidated storage is within the DOE's current capabilities, is very much the right thing to do.

Sincerely yours,

Per F. Peterson  
William and Jean McCallum Floyd Professor of  
Nuclear Engineering

# BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE

April 23, 2012

Senator Dianne Feinstein, Chairman  
Senate Committee on Appropriations  
Subcommittee on Energy  
and Water Development  
184 Dirksen Senate Office Building  
Washington, DC 20510

Senator Lamar Alexander, Ranking Member  
Senate Committee on Appropriations  
Subcommittee on Energy  
and Water Development  
184 Dirksen Senate Office Building  
Washington, DC 20510

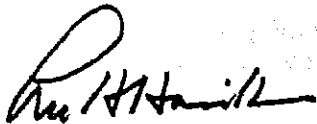
Dear Senators Feinstein and Alexander:

Thank you for your leadership and dedication to solving one of our nation's most complex problems. Your proposed legislation regarding a pilot storage program for high level nuclear waste and spent nuclear fuel incorporates several key recommendations of the Blue Ribbon Commission on America's Nuclear Future and is a positive step toward the goal of creating an integrated nuclear waste management program in the United States.

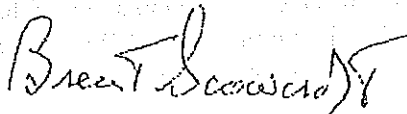
As you know, our Commission recommended a consent-based approach to siting new nuclear waste management facilities, including facilities for consolidated interim storage of spent nuclear fuel. We are pleased to see that your proposed legislation incorporates these recommendations. Looking forward, we are hopeful that the process you call for in your legislation can be carried out by a new nuclear waste management organization that is independent from the Department of Energy, has assured access to the nuclear waste fee and fund, and can provide the stability, focus, continuity and credibility that are essential to get the nation's nuclear waste program back on track.

A serious lack of trust exists today in the federal government's ability to meet its nuclear waste cleanup obligations. The longer our country fails to solve the nuclear waste problem, the greater the trust deficit becomes – with the U.S. government continuing to fail in its legal and moral obligation to take spent nuclear fuel and defense high level waste while the future of nuclear power as an option for electrical generation in this country is seriously jeopardized. We believe your efforts, along with those of Senators Bingaman and Murkowski with whom you have been working closely on this matter, can begin to restore trust in our country's ability to tackle difficult problems in an effective, bi-partisan manner.

With best regards,



Lee H. Hamilton  
Co-Chairman



Brent Scowcroft  
Co-Chairman



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

April 23, 2012

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

Dear Chairman Jaczko:

In connection with the Committee on Energy and Commerce's ongoing oversight of the Nuclear Regulatory Commission (NRC), we seek to examine Commission-level governance of the NRC, including the Chairman's role as principal executive officer of the NRC.

As part of this inquiry, we seek information relating to the development of policies established by the Commission to govern the actions of the Chairman and Commissioners. We also seek information relating to any guidelines and procedures the Chairman may have for the execution of responsibilities reserved for the Chairman in the Energy Reorganization Act of 1974 and the Reorganization Plan No.1 of 1980, as codified. Accordingly, and pursuant to Rules X and XI of the U.S. House of Representatives, we respectfully request you provide the following by May 1, 2012:

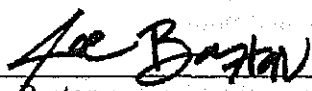
1. A complete and detailed timeline for the development of the revised Internal Commission Procedures (ICPs), which went into effect at least in part on or about July 5, 2011, and include any subsequent changes made at the suggestion of the Office of General Counsel or Office of Secretary before final implementation on or about September 13, 2011.
2. The complete voting records of the Commissioners and Chairman concerning revisions and draft revisions to the ICPs, including all COMSECYs, all votes, all Commissioner and Chairman responses to draft Staff Requirements Memoranda (SRMs), and related communications.
3. The current "guidelines and procedures" established by the Office of the Chairman used for execution of operational responsibilities reserved for the Chairman in the relevant statutes and Commission policies, as identified at page 13, Chapter 1 of the current ICPs.


- a. Have you made any revisions or changes to these procedures since becoming Chairman?
  - b. If so, please identify and explain any changes to these procedures made by you or your staff since you became Chairman.
4. List each case where ICPs have not been followed since July 1, 2011, explain what deviations were followed, and why.

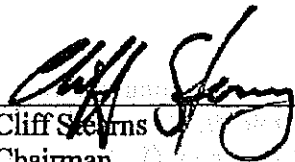
We ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. We appreciate your prompt attention to this request. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

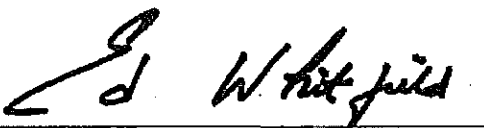
Sincerely,

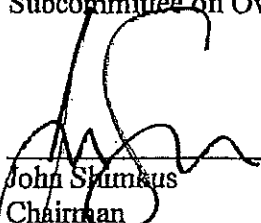
  
Fred Opton  
Chairman

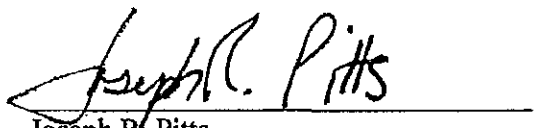
  
Joe Barton  
Chairman Emeritus

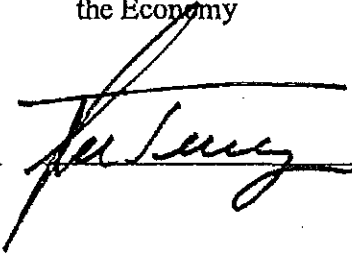
  
Sue Myrick  
Vice Chairman

  
Cliff Stearns  
Chairman  
Subcommittee on Oversight and Investigations

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

  
John Shumkus  
Chairman  
Subcommittee on Environment and  
the Economy

  
Joseph R. Pitts  
Chairman  
Subcommittee on Health



Paul C. Boyer Leonard Lane

Brian King

Robert E. Jaffe

Charles F. Bass

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

The Honorable Bobby L. Rush, Ranking Member  
Subcommittee on Energy and Power

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

The Honorable Kristine L. Svinicki, Commissioner  
The Honorable George Apostolakis, Commissioner  
The Honorable William D. Magwood, IV, Commissioner  
The Honorable William C. Ostendorff, Commissioner

Attachment

# United States Senate

WASHINGTON, DC 20510

April 24, 2012

The Honorable Daniel Inouye  
Chairman  
Senate Committee on Appropriations  
S-128, The Capitol  
Washington, DC 20510

The Honorable Thad Cochran  
Ranking Member  
Senate Committee on Appropriations  
S-146a, The Capitol  
Washington, DC 20510

The Honorable Hal Rogers  
Chairman  
House Committee on Appropriations  
H-307, The Capitol  
Washington, DC 20515

The Honorable Norman Dicks  
Ranking Member  
House Committee on Appropriations  
1016 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Inouye, Ranking Member Cochran, Chairman Rogers, and Ranking Member Dicks,

As you prepare your Fiscal Year 2013 Energy, Water, and Related Agencies Appropriations bill, I am writing to request that you honor the wishes of the State of Nevada, continue to defund the proposed Yucca Mountain Nuclear Waste Repository, and prioritize funding that seeks alternatives to Yucca Mountain for the long-term storage of our nation's nuclear waste.

As you know, my home state of Nevada is home to Yucca Mountain, and our state has been dealing with this boondoggle project for literally decades. I have consistently opposed making Nevada our nation's nuclear waste dump. While we need to responsibly develop all of our nation's energy resources, including nuclear energy, the irresponsible history of Yucca Mountain undermines the integrity of the project. The Nuclear Waste Policy Act of 1982 charged the Department of Energy (DOE) with finding an appropriate repository site for the disposal of our nation's spent nuclear material. Yucca Mountain was one among many proposed geological sites DOE was charged to investigate based on rigorous guidelines. Unfortunately, the Act was amended in 1987 to concentrate only on Yucca Mountain. With that, Nevada, a state without any nuclear power plants, was legally compelled to bear the burden of permanent storage of nation's nuclear waste. This decision in 1987 initiated a one-sided debate, and the study of alternatives effectively ceased.

Nevadans have a right to be safe in their own backyards, and given the historically politicized nature of this project, I don't trust the federal government to appropriately manage Yucca Mountain.

I appreciate the need to address the problem of spent nuclear fuel, but believe it must be solved through careful consideration of all alternatives based on credible scientific information coupled with consent from the host community and state, rather than by politicians in Washington. I am sure you are aware that the Blue Ribbon Commission on America's Nuclear Future produced a report in January that suggested this path toward solutions.

It is my hope that Congress can move past Yucca Mountain and embrace better options for long-term storage of spent nuclear fuel. In that vein, I respectfully request that no funds are appropriated in the Fiscal Year 2013 Energy, Water, and Related Agencies Appropriations bill to facilitate a nuclear waste repository at Yucca Mountain.

Sincerely,



DEAN HELLER  
U.S. Senator

PRESS ROOM ABOUT THE COMMITTEE BILL STATUS HEARINGS & TESTIMONY LEGISLATION SUBCOMMITTEES REPUBLICAN PAGE



## Summary: FY13 Energy and Water Development Appropriations Bill



### U.S. Senate Committee on Appropriations

PRESS RELEASE

For Immediate Release: April 24, 2012

Contact: Rob Blumenthal w/Inouye 202-224-1010  
Eve Goldsher 202-224-3751

## Summary: FY13 Energy and Water Development Appropriations Bill

*Feinstein applauds subcommittee approval of bill that invests in critical water infrastructure, advances clean energy technologies, secures nuclear material worldwide, and makes the nuclear weapons stockpile safer*

Washington, D.C. - The U.S. Senate Appropriations Subcommittee on Energy and Water Development today approved fiscal year 2013 funding legislation that totals \$33.361 billion, which is \$373 million below the fiscal year 2012 enacted level. The bill funds the Army Corps of Engineers, the Department of Energy (DOE), and the Bureau of Reclamation, which provide critical investments in water infrastructure, clean and alternative energy sources, and national security activities related to nuclear weapons modernization and preventing nuclear terrorism.

U.S. Senator Dianne Feinstein (D-Calif.), Chairman of the Energy and Water Development Appropriations Subcommittee, issued the following statement:

"This bill makes responsible investments in critical water infrastructure projects, clean energy technologies and nonproliferation and nuclear weapons programs. It allows the Corps of Engineers and the Bureau of Reclamation to fulfill their public safety responsibilities around the country while safeguarding and modernizing our nuclear weapon stockpile. The bill adds a limited provision to begin addressing our lack of policy for long-term storage of spent nuclear fuel and high-level radioactive waste, providing the Department of Energy with the authority to initiate a pilot program for a consolidated storage facility."

### Highlights of the fiscal year 2013 Energy and Water Development Appropriations bill:

**Department of Energy (DOE)**-The bill provides \$27.128 billion for DOE, which is \$1.380 billion above fiscal year 2012. The subcommittee's priority is to advance clean energy technologies and invest in research that will spur future economic growth.

- **The Advanced Research Projects Agency-Energy (ARPA-E)**-The bill provides \$312 million, which is \$37 million above fiscal year 2012, to accelerate

commercialization of future energy technologies that can reduce the nation's dependence on foreign oil and tackle carbon emissions.

- **Office of Science**-The bill provides \$4.909 billion, which is \$35 million above fiscal year 2012, for basic research. The highest priorities are materials and biological research to focus on breakthroughs in energy applications and computing to develop the next-generation high performance systems.
- **Energy Efficiency and Renewable Energy**-The bill provides \$1.98 billion, which is \$160 million more than fiscal year 2012, to advance solar, biomass, and vehicle technologies.
- **Electricity and Energy Reliability**-The bill provides \$143 million, which is \$4 million more than fiscal year 2012, to support energy integration into the electric transmission grid. The bill fully funds a new Electricity Systems Hub to accelerate efforts to modernize the electric transmission and distribution systems.
- **Nuclear Energy**-The bill provides \$793 million, which is \$31 million above fiscal year 2012 for nuclear energy. The bill fully funds the small modular reactors program to support design certification and licensing and begins to implement the recommendations of the Blue Ribbon Commission to address safe long-term storage of commercial spent nuclear fuel and defense high level waste.
- **The National Nuclear Security Administration**-The bill provides \$11.511 billion, which is \$511 million above fiscal year 2012, for national security activities. The bill provides funding to accelerate efforts to secure all vulnerable nuclear materials by December 2013 and to modernize the nuclear weapons stockpile, including:
  - \$7.577 billion, which is \$363 million above fiscal year 2012, for Weapons Activities to extend the life of three nuclear weapons systems, upgrade aging infrastructure, and invest in science, technology, and engineering activities,
  - \$2.459 billion, which is \$163 million above fiscal year 2012, for Nuclear Nonproliferation to meet the four year goal to secure vulnerable nuclear materials and accelerate the conversion of reactors that still use weapons-grade uranium,
  - \$1.089 billion, which is \$9 million above fiscal year 2012, for Naval Reactors to continue research and development of a new reactor for the Ohio-class submarine, and
  - up to \$150 million across the agency's accounts to fund a research, development, and demonstration project for domestic enrichment technologies.
- **Environmental Cleanup**-The bill provides \$5.7 billion, which is \$3 million below fiscal year 2012, to remediate sites contaminated by defense and civilian activities. This includes \$5.064 billion for Defense Environmental Cleanup to safely cleanup sites contaminated by previous nuclear weapons production.

**Army Corps of Engineers**-The bill provides \$5.007 billion, which is \$276 million above the President's budget request and \$5 million above fiscal year 2012, including:

- \$2.404 billion, which is \$8 million below fiscal year 2012, for Operations and Maintenance,
- \$1.7 billion, which is \$6 million above fiscal year 2012, for Construction,
- \$253 million, which is \$1 million above fiscal year 2012, for the Mississippi River and Tributaries,
- \$199 million, which is \$6 million more than fiscal year 2012, for the Regulatory Program, and
- \$125 million, the same as fiscal year 2012, for General Investigations.

**Department of the Interior**-The bill provides \$1.049 billion, which is \$15 million above the President's budget request and \$27 million below fiscal year 2012, including the following highlights for the Bureau of Reclamation:

- \$892 million, which is \$3 million below fiscal year 2012, for Water and Related Resources,
- \$40 million, which is \$13 million below fiscal year 2012, for the Central Valley Project Restoration Fund, and
- \$36 million, which is \$4 million below fiscal year 2012, for the California Bay-Delta Restoration

Senate Engrossed

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

## SENATE CONCURRENT MEMORIAL 1004

A CONCURRENT MEMORIAL

URGING THE UNITED STATES CONGRESS TO ENACT MODIFICATIONS RECOMMENDED BY THE BLUE RIBBON COMMISSION THAT WILL PROVIDE FOR THE SAFE DISPOSAL OF SPENT NUCLEAR MATERIALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 To the Congress of the United States of America:

2 Your memorialist respectfully represents:

3 Whereas, Arizona has a long history and interest in the recycling and  
4 enrichment of spent nuclear fuel, as well as the temporary and permanent  
5 storage of spent nuclear fuel; and

6 Whereas, Arizona proposes to establish a Blue Ribbon Commission for the  
7 state's nuclear future analogous to the federal Blue Ribbon Commission on  
8 America's Nuclear Future; and

9 Whereas, Arizona proposes to create a "State Corp" to interface with  
10 the United States government's "Fedcorp"; and

11 Whereas, Arizona proposes to establish a Nuclear Energy Advisory  
12 Committee to complement Arizona's State Corp; and

13 Whereas, Arizona sees the following benefits to its citizens by  
14 partnering with the federal government and private sector in developing spent  
15 nuclear fuel reprocessing and retrieval storage sites:

- 16 • \$20 billion federal investment to build recycling and  
17 retrievable storage facilities.
- 18 • Development of 18,000 construction jobs over 10 years.
- 19 • Development of 5,000 direct postconstruction jobs and 30,000  
20 indirect postconstruction jobs.
- 21 • Annual infusion of \$500 million to the host community.
- 22 • Establishment of the Arizona Energy Education Fund.
- 23 • Annual infusion of \$100 million to the education fund for K-12  
24 and higher education.
- 25 • Rejuvenation of education in Arizona, particularly in science,  
26 technology, engineering and mathematics.

27 Whereas, the United States has traveled nearly twenty-five years down  
28 the current path only to come to a point where continuing to rely on the same  
29 approach seems destined to bring further controversy, litigation and  
30 protracted delay; and

31 Whereas, as evidence of America's inability to follow through on the  
32 storage question, over 60,000 metric tons of nuclear waste are in temporary  
33 storage at 131 military and civilian sites around the country; and

34 Whereas, Congress established a policy for the disposal of spent  
35 nuclear fuel in the Nuclear Waste Policy Act of 1982 and subsequent  
36 amendments (Act), which authorized the disposal of used nuclear fuel in an  
37 appropriately characterized geologic repository; and

38 Whereas, the United States Department of Energy and the Nuclear  
39 Regulatory Commission have abandoned the development of Yucca Mountain in  
40 Nevada, thereby limiting the options for used fuel disposal for those  
41 entities that have paid into the Nuclear Waste Fund for decades and that are  
42 managing their existing inventories of spent nuclear fuel; and

43 Whereas, nuclear electric generating facilities and other related  
44 industries have few options for the management of spent nuclear fuel since

1 the federal government abandoned Yucca Mountain, while the inventory of spent  
2 fuel grows by 2,000 tons annually; and

3 Whereas, the United States energy requirements and policy on spent  
4 nuclear fuel have reached critical stages, and legislation that will allow  
5 for the recycling, enrichment and storage of spent nuclear fuel will offer  
6 opportunities for the State of Arizona to be part of the process for  
7 developing national and local policies on the recycling of spent nuclear  
8 fuel, in conjunction with the Nuclear Regulatory Commission and the United  
9 States Department of Energy or any successor entity; and

10 Whereas, the Blue Ribbon Commission on America's Nuclear Future has  
11 adopted guidelines on a consent-based approach to siting nuclear waste  
12 management facilities, the transfer of spent nuclear fuel from reactor to  
13 reprocessing facility, the temporary storage of spent fuel based on age,  
14 spent nuclear fuel recycling, the storage and Monitored Retrieval Storage  
15 (MRS) system and deep geological repositories and the sale of nuclear fuel to  
16 nuclear energy providers; and

17 Whereas, the State of Arizona has an interest in the economic benefits  
18 of exploring the development of recycling spent nuclear fuel technologies and  
19 the safe treatment and disposal of nuclear materials, along with supporting  
20 the national security benefits from the proposed changes to the act; and

21 Whereas, the State of Arizona has completed preliminary planning  
22 analogous to the Blue Ribbon Commission guidelines; and

23 Whereas, Arizona offers multiple sites that offer remoteness, deep  
24 geologic storage and existing transportation infrastructure; and

25 Whereas, the State of Arizona proposes the creation of the Arizona  
26 Energy Education Fund to be funded by a premium on spent nuclear fuel  
27 recycling, enrichment, temporary and permanent storage to act as a  
28 countercyclical revenue stream to offset the normal cycle of economic boom  
29 and bust; and

30 Whereas, nuclear energy has the smallest environmental impact of any  
31 electricity source that emits no greenhouse gases. A wind farm would need  
32 235 square miles to produce the same amount of electricity as a  
33 1,000-megawatt nuclear power plant but the nuclear plant would need less than  
34 one percent of that area. Further, one nuclear fuel pellet, one-quarter inch  
35 in diameter and one-half inch long, provides as much as 149 gallons of oil or  
36 one ton of coal or 17,000 cubic feet of natural gas. America's 104 civilian  
37 nuclear power reactors provide clean-air electricity for one in five homes  
38 and business, and five fuel pellets can meet a household's electricity needs  
39 for an entire year; and

40 Whereas, becoming a center for spent fuel reprocessing and MRS  
41 facilities necessarily becomes an economic multiplier through expanded  
42 nuclear research, production of medical isotopes and an expanded employment  
43 base in nuclear-related industries from construction to deconstruction, from  
44 technicians to scientists and engineers, and the collateral positions that  
45 support and service employment growth.

1 Wherefore your memorialist, the Senate of the State of Arizona, the House of  
2 Representatives concurring, prays:

3 1. That the United States Congress recognize that modification to the  
4 Act to allow access to funds from the Nuclear Waste Fund to be used for the  
5 establishment of a new management enterprise with broad responsibility for  
6 the management of spent nuclear fuel, allow for the recycling and enrichment  
7 of spent nuclear fuel, provide for the protection of nuclear materials to  
8 prevent proliferation of nuclear materials, and provide for the safe disposal  
9 of nuclear materials is in the interest of national security and will promote  
10 the economic opportunity and security of the State of Arizona.

11 2. That the Secretary of State of the State of Arizona transmit copies  
12 of this Memorial to the President of the United States Senate, the Speaker of  
13 the United States House of Representatives and each Member of Congress from  
14 the State of Arizona.

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4625

To amend the Nuclear Waste Policy Act of 1982 to require the President to certify that the Yucca Mountain site remains the designated site for the development of a repository for the disposal of high-level radioactive waste, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2012

Mr. WILSON of South Carolina (for himself, Mr. PETRI, Mr. GOWDY, Mr. SCOTT of South Carolina, Mr. MULVANEY, Mr. BROUN of Georgia, Mr. DUNCAN of South Carolina, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

## A BILL

To amend the Nuclear Waste Policy Act of 1982 to require the President to certify that the Yucca Mountain site remains the designated site for the development of a repository for the disposal of high-level radioactive waste, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Yucca Utilization to  
5 Control Contamination Act".

1 SEC. 2. CERTIFICATION OF COMMITMENT TO YUCCA MOUN-  
2 TAIN.

3 (a) IN GENERAL.—Subtitle E of title I of the Nuclear  
4 Waste Policy Act of 1982 (42 U.S.C. 10172 et seq.) is  
5 amended by adding at the end the following:

6 "SEC. 162. CERTIFICATION OF COMMITMENT TO YUCCA  
7 MOUNTAIN SITE.

8 "(a) DEFINITION OF DEFENSE WASTE.—In this sec-  
9 tion, the term 'defense waste' means—

10 "(1) transuranic waste;

11 "(2) high-level radioactive waste;

12 "(3) spent nuclear fuel;

13 "(4) special nuclear materials;

14 "(5) greater-than-class C, low-level radioactive  
15 waste; and

16 "(6) any other waste arising from the produc-  
17 tion, storage, or maintenance of nuclear weapons  
18 (including components of nuclear weapons).

19 "(b) CERTIFICATION OF COMMITMENT.—Not later  
20 than 30 days after the date of enactment of this section,  
21 the President shall publish in the Federal Register a no-  
22 tice that the President certifies that the Yucca Mountain  
23 site is the selected site for the development of a repository  
24 for the disposal of high-level radioactive waste and spent  
25 nuclear fuel, in accordance with section 160.

1       “(c) FAILURE TO PUBLISH CERTIFICATION; REV-  
2 OCATION OF CERTIFICATION.—If the President fails to  
3 publish the certification of the President in accordance  
4 with subsection (b), or if the President revokes the certifi-  
5 cation of the President after the date described in that  
6 subsection, not later than 1 year after the date described  
7 in subsection (b), or the date of revocation, as appropriate,  
8 and in accordance with subsection (d)—

9           “(1) each entity that is required under section  
10       302 to make a payment to the Secretary shall not  
11       be required to make any additional payment; and

12           “(2) each entity that has made a payment  
13       under section 302 shall receive from the Secretary of  
14       the Treasury, from amounts available in the Nuclear  
15       Waste Fund, an amount equal to the aggregate  
16       amount of the payments made by the entity (includ-  
17       ing interest on the aggregate amount of the pay-  
18       ments) to the Secretary for deposit in the Nuclear  
19       Waste Fund.

20       “(d) USE OF RETURNED PAYMENTS.—

21           “(1) IN GENERAL.—Subject to paragraph (2),  
22       of the aggregate amount of payments returned to an  
23       entity described in subsection (c)(2)—

1           “(A) 75 percent shall be used by the entity  
2           to provide rebates to ratepayers of the entity;  
3           and

4           “(B) 25 percent shall be used by the entity  
5           to carry out upgrades to nuclear power facilities  
6           of the entity to enhance the storage and secu-  
7           rity of materials used to generate nuclear  
8           power.

9           “(2) DEFENSE WASTE.—In the case of a pay-  
10          ment required to be paid to an entity for the storage  
11          of defense waste, the Secretary shall use the amount  
12          required to be paid to the entity to meet the penalty  
13          payment obligation of the Secretary under sub-  
14          section (e)(2) to the State in which the entity is lo-  
15          cated.

16          “(e) DISPOSITION OF DEFENSE WASTE.—

17                 “(1) IN GENERAL.—Not later than January 1,  
18                 2017, the Secretary shall initiate the transportation  
19                 of defense waste from each State in which defense  
20                 waste is located to the Yucca Mountain site.

21                 “(2) PENALTY.—

22                         “(A) IN GENERAL.—Subject to subpara-  
23                         graph (B), if the Secretary fails to initiate the  
24                         transportation of defense waste in accordance  
25                         with paragraph (1), the Secretary shall pay to

1           each State in which defense waste is located  
2           \$1,000,000 for each day that the defense waste  
3           is located in the State until the date on which  
4           the Secretary initiates the transportation of the  
5           defense waste under paragraph (1).

6           “(B) MAXIMUM AMOUNT.—Subject to sub-  
7           section (c)(2), for each calendar year, the Sec-  
8           retary shall not pay to any State described in  
9           subparagraph (A) an amount greater than  
10          \$100,000,000.

11          “(C) REQUIRED USE OF PAYMENTS.—A  
12          State that receives amounts through a payment  
13          from the Secretary under this paragraph shall  
14          use the amounts—

15                 “(i) to help offset the loss in commu-  
16                 nity investments that results from the con-  
17                 tinued storage of defense waste in the  
18                 State; and

19                 “(ii) to help mitigate the public health  
20                 risks that result from the continued stor-  
21                 age of defense waste in the State.

22          “(f) DETERMINATION BY COMMISSION TO GRANT OR  
23          AMEND LICENSES.—In determining whether to grant or  
24          amend any license to operate any civilian nuclear power  
25          reactor, or high-level radioactive waste or spent fuel stor-



1 age or treatment facility, under the Atomic Energy Act  
2 of 1954 (42 U.S.C. 2011 et seq.), the responsibilities of  
3 the President and the Secretary described in this subtitle  
4 shall be considered to be sufficient and independent  
5 grounds for the Commission to determine the existence of  
6 reasonable assurances that spent nuclear fuel and high-  
7 level radioactive waste would be disposed of safely and in  
8 a timely manner by the entity that is the subject of the  
9 determination.

10 “(g) EFFECTS.—

11 “(1) TERMINATION OF PAYMENT REQUIRE-  
12 MENT; ACCEPTANCE OF RETURNED PAYMENTS.—

13 With respect to an entity that receives a benefit  
14 under paragraph (1) or (2) of subsection (c)—

15 “(A) the entity shall not be considered by  
16 the Commission to be in violation under section  
17 302(b); and

18 “(B) the Commission shall not refuse to  
19 take any action with respect to a current or  
20 prospective license of the entity on the grounds  
21 that the entity has cancelled or rescinded a con-  
22 tract to which the entity is a party as the result  
23 of—

1                   “(i) the failure by the entity to make  
2                   a payment to the Secretary under section  
3                   302; or

4                   “(ii) the acceptance by the entity of  
5                   amounts described in subsection (c)(2).

6                   “(2) DISPOSITION OF WASTE.—Nothing in this  
7                   section affects the responsibility of the Federal Gov-  
8                   ernment under any Act (including regulations) with  
9                   respect to the ultimate disposition of high-level ra-  
10                  dioactive waste and spent nuclear fuel.”.

11                  (b) CONFORMING AMENDMENT.—The table of con-  
12                  tents of the Nuclear Waste Policy Act of 1982 (42 U.S.C.  
13                  prec. 10101) is amended by adding at the end of the items  
14                  relating to subtitle E of title I the following:

                  “Sec. 162. Certification of commitment to Yucca Mountain site.”.

[FULL COMMITTEE PRINT]

Union Calendar No. \_\_\_\_\_

112TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

[Report No. 112--\_\_\_]

Making appropriations for energy and water development related agencies  
for the fiscal year ending September 30, 2013, and for other purposes.

*April 25th*

IN THE HOUSE

3S

Mr. FRELINGHUYSEN, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

**A BILL**

Making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2013, and for other purposes.

1 able until expended: *Provided*, That of such amount,  
2 \$185,000,000 shall be available until September 30, 2014,  
3 for program direction: *Provided further*, That of the unob-  
4 ligated balances from prior year appropriations available  
5 under this heading, \$23,500,000 is hereby permanently  
6 rescinded: *Provided further*, That no amounts may be re-  
7 scinded from amounts that were designated by the Con-  
8 gress as an emergency requirement pursuant to the Con-  
9 current Resolution on the Budget or the Balanced Budget  
10 and Emergency Deficit Control Act of 1985.

11       ADVANCED RESEARCH PROJECTS AGENCY—ENERGY

12       For necessary expenses in carrying out the activities  
13 authorized by section 5012 of the America COMPETES  
14 Act (Public Law 110-69), as amended, \$200,000,000, to  
15 remain available until expended: *Provided*, That of such  
16 amount, \$20,000,000 shall be available until September  
17 30, 2014, for program direction.

18                       NUCLEAR WASTE DISPOSAL

19       For nuclear waste disposal activities to carry out the  
20 purposes of the Nuclear Waste Policy Act of 1982, Public  
21 Law 97-425, as amended (the “NWPA”), \$25,000,000,  
22 to remain available until expended, and to be derived from  
23 the Nuclear Waste Fund established in section 302(c) of  
24 such Act (42 U.S.C. 10222(c)), to be made available only  
25 to support the Yucca Mountain license application: *Pro-*

1 *vided*, That not less than \$5,000,000 of funds made avail-  
2 able under this heading shall be made available only for  
3 assistance to affected units of local government which have  
4 given formal consent to the Secretary of Energy to host  
5 a high-level waste repository as authorized by the NWPA.

6 TITLE 17 INNOVATIVE TECHNOLOGY LOAN GUARANTEE  
7 PROGRAM

8 Such sums as are derived from amounts received  
9 from borrowers pursuant to section 1702(b)(2) of the En-  
10 ergy Policy Act of 2005 under this heading in prior Acts,  
11 shall be collected in accordance with section 502(7) of the  
12 Congressional Budget Act of 1974: *Provided*, That, for  
13 necessary administrative expenses to carry out this Loan  
14 Guarantee program, \$38,000,000 is appropriated, to re-  
15 main available until September 30, 2014: *Provided further*,  
16 That \$38,000,000 of the fees collected pursuant to section  
17 1702(h) of the Energy Policy Act of 2005 shall be credited  
18 as offsetting collections to this account to cover adminis-  
19 trative expenses and shall remain available until expended,  
20 so as to result in a final fiscal year 2013 appropriation  
21 from the general fund estimated at not more than \$0: *Pro-*  
22 *vided further*, That fees collected under section 1702(h)  
23 in excess of the amount appropriated for administrative  
24 expenses shall not be available until appropriated.

Calendar No. 383

112TH CONGRESS  
2D SESSION

**S. 2465**

[Report No. 112-164]

Making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2013, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 26, 2012

Mrs. FEINSTEIN, from the Committee on Appropriations, reported the following original bill; which was read twice and placed on the calendar

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**A BILL**

Making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2013, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That the following sums are appropriated, out of any  
4 money in the Treasury not otherwise appropriated, for en-  
5 ergy and water development and related agencies for the  
6 fiscal year ending September 30, 2013, and for other pur-  
7 poses, namely:

1 conventional Natural Gas and Other Petroleum Research  
2 Fund.

3 SEC. 311. The individuals described in paragraph (4)  
4 of section 815 of the Native American Programs Act of  
5 1974 (42 U.S.C. 2992c) shall be eligible for the programs  
6 under title XXVI of the Energy Policy Act of 1992 (25  
7 U.S.C. 3501 et seq.) in the same manner as an Indian  
8 tribe (as that term is defined in section 2601 of the En-  
9 ergy Policy Act of 1992 (25 U.S.C. 3501).

10 SEC. 312. (a) DEFINITIONS.—In this section:

11 (1) AFFECTED INDIAN TRIBE.—The term “af-  
12 fected Indian tribe” has the meaning given the term  
13 in section 2 of the Nuclear Waste Policy Act of 1982  
14 (42 U.S.C. 10101).

15 (2) HIGH-LEVEL RADIOACTIVE WASTE.—The  
16 term “high-level radioactive waste” has the meaning  
17 given the term in section 2 of the Nuclear Waste  
18 Policy Act of 1982 (42 U.S.C. 10101).

19 (3) NUCLEAR WASTE FUND.—The term “Nu-  
20 clear Waste Fund” means the Nuclear Waste Fund  
21 established under section 302(c) of the Nuclear  
22 Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

23 (4) SECRETARY.—The term “Secretary” means  
24 the Secretary of Energy.

1           (5) SPENT NUCLEAR FUEL.—The term “spent  
2           nuclear fuel” has the meaning given the term in sec-  
3           tion 2 of the Nuclear Waste Policy Act of 1982 (42  
4           U.S.C. 10101).

5           (b) PILOT PROGRAM.—Notwithstanding any provi-  
6           sion of the Nuclear Waste Policy Act of 1982 (42 U.S.C.  
7           10101 et seq.), the Secretary is authorized, in the current  
8           fiscal year and subsequent fiscal years, to conduct a pilot  
9           program, through 1 or more private sector partners, to  
10          license, construct, and operate 1 or more government or  
11          privately owned consolidated storage facilities to provide  
12          interim storage as needed for spent nuclear fuel and high-  
13          level radioactive waste, with priority for storage given to  
14          spent nuclear fuel located on sites without an operating  
15          nuclear reactor.

16          (c) REQUESTS FOR PROPOSALS.—Not later than 120  
17          days after the date of enactment of this Act, the Secretary  
18          shall issue a request for proposals for cooperative agree-  
19          ments—

20                 (1) to obtain any license necessary from the  
21                 Nuclear Regulatory Commission for the construction  
22                 of 1 or more consolidated storage facilities;

23                 (2) to demonstrate the safe transportation of  
24                 spent nuclear fuel and high-level radioactive waste,  
25                 as applicable; and



1           (3) to demonstrate the safe storage of spent nu-  
2 clear fuel and high-level radioactive waste, as appli-  
3 cable, at the 1 or more consolidated storage facilities  
4 pending the construction and operation of deep geo-  
5 logic disposal capacity for the permanent disposal of  
6 the spent nuclear fuel.

7           (d) CONSENT-BASED APPROVAL.—Prior to siting a  
8 consolidated storage facility pursuant to this section—

9           (1) the Secretary shall enter into an agreement  
10 to host the facility with—

11                   (A) the Governor of the State;

12                   (B) each unit of local government within  
13 the jurisdiction of which the facility is proposed  
14 to be located; and

15                   (C) each affected Indian tribe; and

16           (2) Congress shall approve the terms of the  
17 agreement and authorize the appropriation of funds  
18 from the Nuclear Waste Fund to implement the  
19 terms of the agreement.

20           (e) APPLICABILITY.—In executing this section, the  
21 Secretary shall comply with—

22           (1) all licensing requirements and regulations of  
23 the Nuclear Regulatory Commission; and

24           (2) all other applicable laws (including regula-  
25 tions).

1 (f) PILOT PROGRAM PLAN.—Not later than 120 days  
2 after the date on which the Secretary issues the request  
3 for proposals under subsection (c), the Secretary shall sub-  
4 mit to Congress a plan to carry out this section that in-  
5 cludes—

6 (1) an estimate of the cost of licensing, con-  
7 structing, and operating a consolidated storage facil-  
8 ity, including the transportation costs, on an annual  
9 basis, over the expected lifetime of the facility;

10 (2) a schedule for—

11 (A) obtaining any license necessary to con-  
12 struct and operate a consolidated storage facil-  
13 ity from the Nuclear Regulatory Commission;

14 (B) constructing the facility;

15 (C) transporting spent fuel to the facility;

16 and

17 (D) removing the spent fuel and decom-  
18 missioning the facility; and

19 (3) an estimate of the cost of any financial as-  
20 sistance, compensation, or incentives proposed to be  
21 paid to the host State, Indian tribe, or local govern-  
22 ment;

23 (4) an estimate of any future reductions in the  
24 damages expected to be paid by the United States  
25 for the delay of the Department of Energy in accept-

1 ing spent fuel expected to result from the pilot pro-  
2 gram;

3 (5) recommendations for any additional legisla-  
4 tion needed to authorize and implement the pilot  
5 program; and

6 (6) recommendations for a mechanism to en-  
7 sure that any spent nuclear fuel or high-level radio-  
8 active waste stored at a consolidated storage facility  
9 pursuant to this section shall move to deep geologic  
10 disposal capacity, following a consent-based approval  
11 process for that deep geologic disposal capacity con-  
12 sistent with subsection (d), within a reasonable time  
13 after the issuance of a license to construct and oper-  
14 ate the consolidated storage facility.

15 (g) PUBLIC PARTICIPATION.—Prior to choosing a  
16 site for the construction of a consolidated storage facility  
17 under this section, the Secretary shall conduct 1 or more  
18 public hearings in the vicinity of each potential site and  
19 in at least 1 other location within the State in which the  
20 site is located to solicit public comments and recommenda-  
21 tions.

22 (h) USE OF NUCLEAR WASTE FUND.—The Secretary  
23 may make expenditures from the Nuclear Waste Fund to  
24 carry out this section, subject to appropriations.

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

April 27, 2012

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

Dear Chairman Jaczko:

We write to learn more about the processes the Nuclear Regulatory Commission (NRC) has in place to ensure NRC employees feel free to raise concerns without fear of reprisal. In a speech you gave on February 29, 2012, to the National Association of Employee Concerns Professionals (NAECP) in the context of work environment at the nation's nuclear plants, you stated that "[t]he existence of a healthy work environment, in which employees are free to raise safety concerns, is a vital underpinning of the NRC's regulatory oversight."<sup>1</sup> We couldn't agree more. In light of this, we seek your assistance to help us understand how practices for ensuring a healthy work environment similarly apply to you and your fellow commissioners at the NRC.

The NRC requires its licensees to maintain a culture of safety and subjects them to inspections and enforcement against a "chilled work environment." The NRC Inspection Manual defines a "chilled work environment" as "one in which employees perceive that raising safety concerns to their employer or to the NRC is being suppressed or is discouraged and can occur because of an event, interaction, decision, or policy change." Allegation Guidance Memorandum 2012-001 provides guidance to agency staff regarding the use of "chilling effect letters" to ensure licensees are taking appropriate actions to foster a safety conscious work environment (SCWE).

Allegation Guidance Memorandum 2012-001 lists factors that contribute to a chilled environment at licensee facilities:

- The number of allegations;
- The number of concerned individuals; and,

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<sup>1</sup> <http://pbadupws.nrc.gov/docs/ML1206/ML120610047.pdf>.

- Concerns specifically indicating fear or reluctance to raise concerns.

The Memorandum also directs staff to examine specific events that may have had a chilling effect and to "consider the number of individuals who witnessed the event or who are potentially affected by it; the notoriety of the event; the position, responsibility, and level of influence of the individual causing the chilling effect; and the egregiousness of the behavior."

Billie Garde, a whistle-blower advocate and frequent witness before the Commission, summarized how unacceptable behavior can derail safety culture in a Commission meeting March 30, 2010:

"...in my experience where these work environments get off track is, and then can result in an erosion of safety culture, it frequently goes back to leadership, but there's still a lot of folks in industry that think leadership in this industry is yelling real loud.

"That isn't it, and I think it is time that we are able to say that respectful work environments that do not -- are not based on that kind of intimidating and harassing behaviors have to have a common understanding.

"It's just not okay in 2010 and 2011 to say, well that's just the way he or she behaves so we all just have to adjust to those types of unacceptable behaviors, because professionals and people that we want to pay attention to safety first, don't.

"Human nature just does not react well to being managed by humiliation.

"If we don't get that out of this industry, it will continue to cause problems that will occupy a lot of time and energy."

Just as we agree with your aforementioned remarks in February to the NAECP, we agree with those of Ms. Garde.

Moreover, we expect all commissioners to lead by example and to conduct themselves with standards that meet or exceed those required and expected of the industry. This is particularly important for a chairman, as organizationally, he or she sets the tone and is the principal executive with direct influence over the agency's staff.

According to the agency's website:

"The NRC strives to establish and maintain an open collaborative work environment (OCWE) that encourages all employees and contractors to promptly speak up and share concerns and differing views without fear of negative consequences. An OCWE is a model workplace where diverse views, alternative approaches, critical thinking, collaborative problem solving, unbiased evaluations, and honest feedback are encouraged, recognized, and valued. Trust, respect, and open communication promote a positive work environment that maximizes the potential of all individuals and improves our regulatory decision-making."

Indeed, you yourself have often spoken of the NRC's OCWE as a critical element of the NRC's vibrant safety culture. However, there is evidence that this is not the case at present, and that a chilled work environment exists at the NRC because of your leadership practices.

In a letter to you on October 13, 2011, your fellow commissioners raised this concern and cited such an example regarding a meeting with senior staff on October 5, 2011. They wrote:

"We are shocked to have received numerous reports from NRC senior staff about your remarks at the October 5 Senior Leadership Meeting. Your comments have been interpreted by those present not only to reflect your disdain for the Internal Commission procedures, but also your contempt for the Commission. Your remarks to the NRC senior staff undermine the entire Commission."

A report from the Committee on Oversight and Government Reform (OGR) quoted a staff member who characterized your statements at the meeting as: "I know what is best for safety so you need to get on my team, support my objectives. The other Commissioners are just getting in the way."<sup>2</sup> In conflict with the OCWE, this suggests intolerance for diverse views and alternative approaches, and a lack of interest in collaborative problem solving.

In that same October 13, 2011, letter to you, your fellow commissioners also cited several additional examples. Specifically, the letter states:

"While you are a champion of openness in Commission deliberations, you have taken steps to discourage open communication between the staff and the Commission. There are a number of recent examples where you or your office directed the staff to withhold certain views from the Commission or strongly criticized the staff's views. Two recent examples include your direction to the [Executive Director for Operations (EDO)] to withdraw the [commission paper] on the Fukushima Near Term Task Force Report as well as your strong, ill-tempered criticism of the senior staff's recommendations in the post-Fukushima "21-day" report. While you have communicated to us that your primary motivation in *seeking to remove the EDO* (emphasis added) is based on his lack of communications with you, due diligence with numerous senior staff indicates that your motivation stems from instances where the EDO did not follow your view on what to present to the Commission as the staff's policy position."

The report from OGR<sup>3</sup> provided additional details on the Fukushima matter, describing an exchange between you and the Deputy Director for Operations, Martin Virgilio, where Mr. Virgilio describes your behavior as "red-faced" and "shaking angry," that you became "hostile and accused him of being untruthful." Afterward, it is reported that "staff did not feel that they

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<sup>2</sup> Committee on Oversight and Government Reform "A Crisis of Leadership: How the Actions of Chairman Gregory Jaczko Are Damaging the Nuclear Regulatory Commission", page 46.

<sup>3</sup> Id. at 44.

could question the directions from the Chairman on the [commission paper].<sup>4</sup> Again, in conflict with the OCWE, this suggests that unbiased evaluations and open communication carry risks of negative consequences.

In a December 15, 2011, hearing before the Senate Environment and Public Works Committee, it became evident that the Director of the Office of Public Affairs emailed reporters urging them to read an outside report that denigrated the four commissioners and criticized them for not supporting your proposals on how the agency should respond to the Fukushima accident. Regardless of whether you or your staff instructed him to do so, the episode was quite notable and may have contributed to the perception among NRC employees that disagreeing with you carries a risk of reprisal, suppressing their willingness to share candid advice and recommendations with the Commission.

When we compare the examples listed above to the factors that contribute to a chilled work environment, it appears that the Commission would receive a Chilling Effect Letter if it were subjected to the same scrutiny as it imposes on its licensees. However, there doesn't appear to be a similar procedure under which the NRC would hold itself accountable. To help us understand the implications of this situation, please respond to the following questions or request for information by May 11, 2012.

1. Are there specific requirements and guidance within the NRC that prohibit behaviors that may have a chilling effect on the work environment outside of those enumerated by the Equal Employment Opportunity Commission (e.g., race, gender, religion)? If so, please provide them. If not, please explain why not.
2. Should Commissioners be subject to much the same requirements with regard to ensuring a Safety Conscious Work Environment as NRC licensees? If not, please explain why not.
3. Should the fact that a licensee executive is "passionate" about his particular view on nuclear safety be a mitigating factor in licensee cases where agency staff has evidence that a chilled work environment may exist?
4. If an employee wanted to raise a concern about the Chairman's or another Commissioner's behavior, what options are available outside of actively having to invoke NRC's Open Door Policy process or filing a Differing Professional Opinion?
5. Please provide all reports issued within the past two years to any office director, the Executive Director of Operations, or the Commission, that assess safety culture within the NRC.
6. Are you provided with a report listing which agency staff has met with your fellow commissioners and the topics of their discussions? If so, please provide all copies of these reports and explain why this action does not have a chilling effect on the willingness of staff to raise issues and discuss them freely and directly with the Commissioners.
7. On January 26, 2010, the Commission was provided with an Internal Safety Culture Update. This report indicated "...that there are continuing questions on effectiveness of the differing views processes..." and "...continued perception of potential negative consequences for engaging in these processes..." Please explain how your decisions to


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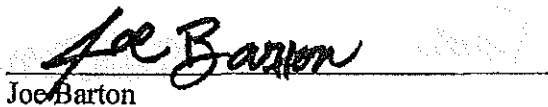
<sup>4</sup> Id.

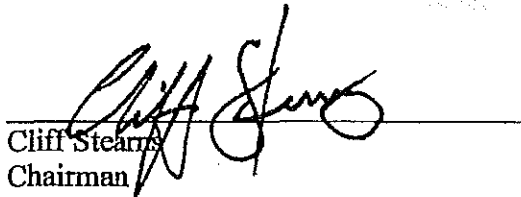
commend some staff for raising Differing Professional Opinions and ignore those brought by others would not exacerbate the perception of negative consequences and further discourage staff from raising perspectives they perceive you to disagree with, thereby contributing to a chilled environment.

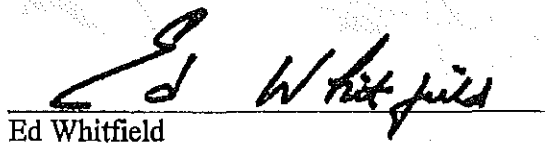
The NRC appears to lack its own guidance for assessing and correcting a chilled work environment, a gap that has, in our view, facilitated a pattern of behavior we find unacceptable at an agency that is responsible for identifying and preventing similar behavior by its licensees. We appreciate your timely response to our request. Please contact Committee staff Annie Caputo at (202) 225-2927 with any questions.

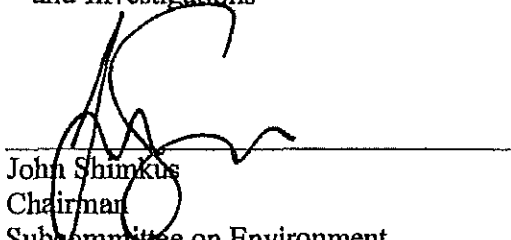
Sincerely,

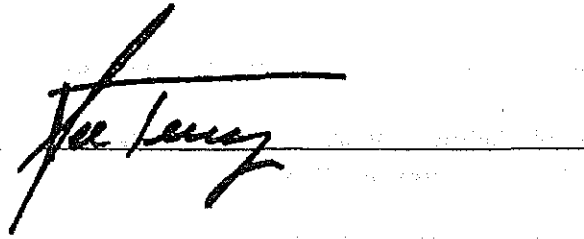
  
Fred Upton  
Chairman

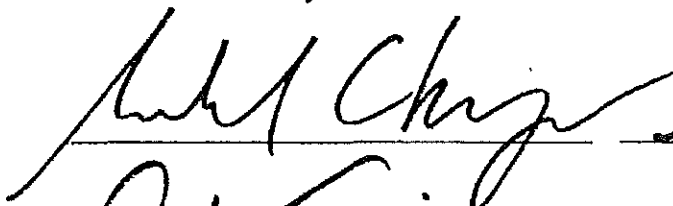
  
Joe Barton  
Chairman Emeritus

  
Cliff Stearns  
Chairman  
Subcommittee on Oversight  
and Investigations

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

  
John Shimkus  
Chairman  
Subcommittee on Environment  
and the Economy

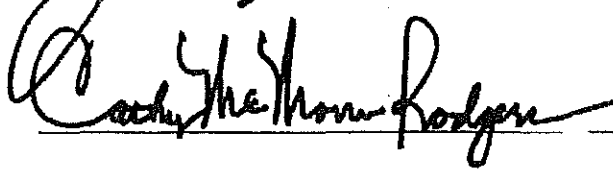


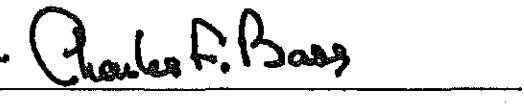














Ben Bitting Mary Boni Mack

Pete Olson Gregg Harper

Lianne Lamm Cory Gardner

Steve Salie Tim Murphy

Bob E. Latta Alan K. Brown

Bill Lundy

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member  
Subcommittee on Energy and Power

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

**Signatories List**

Fred Upton  
Cliff Stearns  
John Shimkus  
Michael C. Burgess  
John Sullivan  
Cathy McMorris Rodgers  
Brian Bilbray  
Pete Olson  
Leonard Lance  
Steve Scalise  
Robert E. Latta  
Bill Cassidy

Joe Barton  
Ed Whitfield  
Lee Terry  
Sue Myrick  
Marsha Blackburn  
Charles F. Bass  
Mary Bono Mack  
Gregg Harper  
Cory Gardner  
Tim Murphy  
Adam Kinzinger

112TH CONGRESS  
2D SESSION

# H. R. 4301

To contribute to the growth of the American economy and the strength of American national security by streamlining regulatory permitting procedures and increasing domestic production from all energy sources.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2012

Mr. DUNCAN of South Carolina (for himself, Mr. WILSON of South Carolina, Mr. POE of Texas, Mr. HARRIS, Mr. WESTMORELAND, Mr. GOHMERT, Mr. GRAVES of Georgia, Mr. BROUN of Georgia, Mr. MULVANEY, Mr. SCOTT of South Carolina, Mr. GOWDY, and Mr. LANDRY) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, the Judiciary, Rules, Ways and Means, Agriculture, Armed Services, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To contribute to the growth of the American economy and the strength of American national security by streamlining regulatory permitting procedures and increasing domestic production from all energy sources.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 sion, the route submitted by the Governor of Nebraska  
 2 under subsection (d)(3)(B) shall be considered approved,  
 3 pursuant to the terms of the permit approved under sub-  
 4 section (a) that meets the requirements of subsection (c)  
 5 and this subsection, by operation of law.

6 (f) PRIVATE PROPERTY SAVINGS CLAUSE.—Nothing  
 7 in this section alters the Federal, State, or local processes  
 8 or conditions in effect on the date of enactment of this  
 9 Act that are necessary to secure access from private prop-  
 10 erty owners to construct the Keystone XL pipeline.

## 11 **TITLE III—RADIOLOGICAL** 12 **MATERIAL REPOSITORY**

### 13 **SEC. 301. RADIOLOGICAL MATERIAL REPOSITORY.**

14 (a) REPOSITORY REQUIRED.—The Federal Govern-  
 15 ment shall site and permit at least one radiological mate-  
 16 rial geologic repository for the disposal of radiological ma-  
 17 terial.

18 (b) YUCCA MOUNTAIN.—

19 (1) IN GENERAL.—The repository site at Yucca  
 20 Mountain shall remain the site for the Nation's radi-  
 21 ological material repository following full statutory  
 22 review of the Department of Energy's license appli-  
 23 cation to construct the Yucca Mountain repository.

24 (2) APPLICATION.—The Nuclear Regulatory  
 25 Commission shall continue to review the Department

1 of Energy's pending license application to construct  
2 the repository at Yucca Mountain until a determina-  
3 tion is made on the merits of the application.

4 (c) DEADLINES.—

5 (1) SUITABILITY DETERMINATION.—Not later  
6 than 90 days after the enactment of this Act, the  
7 Nuclear Regulatory Commission shall make a deter-  
8 mination regarding the suitability of Yucca Moun-  
9 tain under subsection (a).

10 (2) ACTION ON APPLICATION.—Not later than  
11 180 days after the enactment of this Act, the Nu-  
12 clear Regulatory Commission shall approve the ap-  
13 plication under subsection (b).

14 (d) LIMITATIONS ON AMOUNT OF RADIOLOGICAL  
15 MATERIAL.—All statutory limitations on the amount of  
16 radiological material that can be placed in Yucca Moun-  
17 tain are hereby removed and shall be replaced by the Nu-  
18 clear Regulatory Commission with new limits based on sci-  
19 entific and technical analysis of the full capacity of Yucca  
20 Mountain for the storage of radiological material.