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March 21, 2008

NWSC Update

Department of Energy (DOE)

License Application: Ward Sproat, Director of Department of Energy's (DOE), Office of Civilian Radioactive Waste Management, (OCRWM), stated that the Yucca Mountain project is "alive and well," during the Nuclear Regulatory Commission's (NRC) Regulatory Information Conference, and expects to file a license application to the NRC in June for the construction of the permanent repository.

However, DOE has had to readjust the repository's work plan after the \$108 million funding cuts to the nuclear waste disposal program (Program) in the Fiscal Year (FY) 2008 budget. The cutbacks will reduce the work force from approximately 2,400 to 1,500 - 1,700 full-time positions. Sproat singled out key personnel within DOE, the U.S. Geological Survey, the national laboratories and Bechtel SAIC who will be needed to defend the license application. In addition, the construction on the Nevada rail lines that was scheduled to start in October 2009 has been postponed and other segments of the Program to meet the June 30 deadline.

Nuclear Waste Disposal Program: The FY 2009 budget contained a request of \$494.7 million for the Program - \$247.3 million from the Nuclear Waste Fund (NWF) and \$247.4 million for Defense Nuclear Waste Disposal. \$372.8 million is requested for the Program, \$20 million for transportation and \$101.9 million for program management and integration/program direction. From the \$372.8 million, about \$105 million has been set aside to support the DOE's license application.

According to DOE, the budget continues essential engineering design and planning for the permanent repository. In addition, the Administration will work with Congress to provide a stable source of funding for the Program by "establishing a budget neutral mechanism for the Department to receive appropriations equal to annual Nuclear Waste Fund receipts from utilities."

Amidst the layoffs of personnel, DOE plans to add 25 federal managers to the Program this year, and has budgeted for another 50 in the FY 2009 budget. According to Sproat, most of the new employees would be assigned in Nevada.

Questions remain about the Program funding which needs billions of dollars to complete. Sproat confirmed during the NRC meeting that the Administration has been considering since last December reorganizing the Yucca Mountain project and other nuclear waste programs into a quasi-government corporation, similar to the Tennessee Valley Authority.

Sproat stated that this type of corporation would ensure stability, promote accountability and fixes some of the institutional problems that have plagued the permanent repository. However, the change would require approval by Congress which might be reluctant to relinquish its hold on the Nuclear Waste Fund. The idea of the quasi-government corporation seems to have support from the nuclear industry and is garnering some interest by some members of Congress, according to Sproat.

Global Nuclear Energy Partnership (GNEP): The Office of Nuclear Energy requested \$1.4 billion in its FY 2009 budget, an increase of \$386 million over the FY 2008 enacted level. This request includes \$301.5 million for one of its key nuclear programs, the Advance Fuel Cycle Initiative that includes GNEP, a program that supports research and development activities focused on recycling of spent nuclear fuel (SNF) and high-level radioactive waste (HLRW). Congress appropriated \$181 million in its FY 2008 budget to the Advance Fuel Cycle Initiative.

New Deputy Director: Christopher Kouts has been promoted to Principal Deputy Director of OCRWM. A longtime veteran of the Yucca Mountain project, Kouts has been working on the Program for 22 years, most recently in charge of developing the TAD canisters.

Acting Deputy Secretary: The President has designated Jeffrey Kupfer as the acting Deputy Secretary of Energy to replace Clay Sell who resigned in February.

Kupfer served as DOE chief of staff since October 2006. He also served in the White House as a special assistant to the President for economic policy and as the executive director of the President's advisory panel on federal tax reform.

Nuclear Regulatory Commission (NRC)

FY 2009 Budget: The NRC's budget request of \$1.02 billion provides \$786.6 million for nuclear reactor safety, \$221.3 million for nuclear materials waste safety -- including \$37.3 million for the permanent repository -- and \$9 million for the Office of the Inspector General.

By law, the NRC recovers approximately 90 percent of its budget from user fees less appropriations from the NWF and other activities that are not fee recoverable. The budget request will be financed with \$855.5 million from user fees, \$37.3 million from the NWF, and \$124.2 million from the General Fund.

The budget contains a \$90.9 million increase over the FY 2008 budget for regulatory activities driven by the proposed construction of new nuclear power plants and increased oversight of existing reactors, materials and waste licensing. The budget supports the review of seven Combined Operating License (COL) applications for new reactors and continued review of 14 other COL applications expected in this fiscal year. Also, the NRC has oversight of 104 operating power plants, 33 test and research reactors, 20 fuel facilities, and nuclear materials, and it expects to review 21 uranium recovery applications. Funds are also provided in the budget for review of DOE's expected license application for the permanent repository.

Amended Annual Fees: The agency published in the *Federal Register* regulations to amend licensing, inspection and annual fees it charges applicants and licensees for FY 2008. The total amount to be recovered in FY 2008 is approximately \$779.1 million, about \$108.8 million more than in FY 2007.

The hourly rate for both the Nuclear Reactor Safety Program and the Nuclear Materials and Waste Safety Program is \$238 for Part 170 activities. This represents a 7.7% decrease from FY 2007 of \$258 per hour. The decrease resulted due to revised estimate of direct staff hours worked annually per direct full-time equivalent that is used in the hourly rate calculation.

Strategic Plan for FY 2008-2013: The NRC issued a five-year plan that focuses on ways to carry out its safety and security goals. The plan has three organizational excellence objectives:

- 1) Openness by keeping the stakeholders informed about opportunities to participate in the NRC's regulatory process.
- 2) Effectiveness by taking actions that are high-quality, efficient and realistic.
- 3) Operational excellence by using business methods and solutions to achieve the NRC's mission.

The document emphasizes the importance of effective leadership and the relationship between human capital, knowledge management and space challenges that must be addressed in order to ensure the agency can succeed.

Yucca Mountain Hearing: The NRC Atomic Safety and Licensing Board is requesting information from potential parties to a possible adjudicatory hearing on the Yucca Mountain program to help establish case management requirements and procedures to assist licensing boards and parties maintain a strict schedule in NRC regulations for any proceeding.

The Board, referred to as the "Advisory Pre-License Application Presiding Officer Board," or Advisory PAPO Board, was established February 13 to promote efficient participation in the Yucca Mountain proceeding. The Board issued its first request for information on March 6, asking potential interveners to estimate the number of contentions they might file, as well as how much time they would need to answer contentions or reply to answers from other parties. The Board's notice and memorandum requesting the information was published in the *Federal Register*. Potential parties were asked to respond by March 24.

Hostile Action-Based Emergency Drills: The NRC issued a document endorsing revised guidance developed by the Nuclear Energy Institute (NEI) for how nuclear power plants should voluntarily conduct baseline hostile action-based emergency preparedness drills.

Current NRC regulations do not require licensees to use hostile action scenarios in their emergency preparedness drills and exercises. However, in 2005, NEI offered a phased approach for licensees to voluntarily conduct such drills within a three-year period. These "off-year" hostile-action based drills, also called "Phase 3 Drills," are not evaluated by the NRC or the Federal Emergency Management Agency (FEMA), and provide a "no fault" opportunity for licensees to demonstrate responses to the unique challenges security actions pose to existing emergency preparedness programs. During 2007, nine hostile action-based drills were conducted, and 26 are scheduled for 2008.

The revised guidance being endorsed clarifies the scope and methods of demonstration of key objectives of these hostile-action drills. NRC is working with FEMA to identify proposed changes to emergency preparedness regulations and guidance to incorporate hostile action-based scenarios into biennial emergency preparedness exercises.

Annual Assessments of Nuclear Plants: According to the NRC, the nation's 104 operating commercial nuclear power plants continue to operate safely. Frederick Brown, Director of the Division of Inspection and Regional Support stated, "The 2007 year-end results show that about 80 percent of the plants are performing strongly enough that we're satisfied with our basic level of inspections at those locations."

However, the NRC assigns additional personnel to correct the situation if a nuclear power plant performance declines. Only one plant, Palo Verde in Arizona, requires the NRC's highest level of attention. Eight other plants require significant NRC attention, and another eight plants will get some additional attention beyond the basic level.

The NRC plans to meet with the operators of every plant to discuss plant performance. In addition to the annual assessment letters, plants also receive an NRC inspection plan for the coming year. The plants also will be receiving a mid-cycle assessment letter by September.

Advisory Committee Merger: The NRC plans to merge the Advisory Committee on Nuclear Waste and Materials (ACNW&M) into the Advisory Committee on Reactor Safeguards (ACRS) by the end of May.

The ACNW&M work is coming to an end, which includes several letter reports to the NRC on the proposed permanent repository. Once the ACNW&M completes its work in May, the committee's members will be offered positions as consultants to the ACRS.

Safeguards Information (SGI): On March 17, the agency affirmed a final rule that amends its regulations on the designation and handling of security-related information. SGI is a special category of sensitive unclassified information authorized under the Atomic Energy Act.

The final rule reflects changes in the threat environment since September 11, 2001, and the need to protect as SGI additional types of security information held by a broader group of licensees. Individuals provided access to SGI must have a valid "need to know" the information, and must be authorized for access based on a background check. Inadvertent release and unauthorized disclosure of information may result in civil penalties while willful violation of SGI regulations is a felony.

Security Enhancements: The Government Accountability Office (GAO) released a report in January that found additional security enhancements may be needed for nuclear research and test reactors licensed by the NRC. The NRC challenged the report's findings, prior to the GAO's issuance of the report to the House Oversight and Government Reform Subcommittee on National Security and Foreign Affairs.

Consequently, NRC officials established an independent external review panel as part of the GAO's report that identified several vulnerabilities in the agency's materials licensing process. GAO investigators were able to obtain an NRC materials license under fraudulent pretexts and then alter the license in order to procure radioactive materials in excess of the amounts authorized by the license.

The panel recommended the following:

1. Suspend the "good faith presumption" that new applicants or licensees seeking significant increases in their possession limits for radioactive materials are honest, perform site visits to a new applicant's facilities before issuing a license, and conduct background checks on key personnel.
2. Review publicly available licensing guidance to identify and remove information that might be helpful to an adversary seeking to exploit the process.

3. Integrate the NRC's Web-Based Licensing System and National Source Tracking System, both now under development, and include a mechanism for licensees and vendors to enter real-time information on transfers of radioactive materials.
4. Develop detailed physical security requirements for licensees who possess risk-significant radioactive materials.
5. Give security equal billing to health and safety when training NRC or Agreement State licensing officers, so that license reviewers are trained to recognize a malevolent applicant.

Reappointments: NRC Chairman Dale Klein welcomed Gregory Jaczko and Kristine Svinicki to serve as Commissioners on the NRC.

Jaczko was renominated for a second term in December by the President. He is expected to serve a full five-year term, ending June 2013. Jaczko previously served as science policy adviser for Senator Harry Reid (D-NV). He also advised members of the Senate Committee on Environment and Public Works on nuclear policy.

Svinicki, nominated last May by the President served as staff member for the Senate Armed Services Subcommittee on Strategic Forces, focusing on the national security aspects of nuclear energy, DOE defense programs and environmental management issues. Svinicki also served as senior policy advisor on nuclear and environmental issues for Senator Larry Craig (R-ID).

To download the material on any of the above items, go to www.nrc.gov.

February 25-26 NWSC Meeting

Eric Knox, Associate Director, System Operations and External Relations, DOE/OCRWM, stated the greatest challenge the Program faces in the future is continued stream of funding and keeping key personnel. He reiterated that the 2017 deadline for the opening of the permanent repository is not on the table due to the severe FY 2008 budget cuts. Further, the constant threats by politicians and the annual budget shortfalls are affecting not only the employee's morale but also keeping good employees working on the project. It is projected that 69 percent of OCRWM's workforce is eligible for retirement.

Knox further stated that the Program is poised to go forward due the Department's restructuring. Ward Sproat, Director of DOE/OCRWM, has identified key personnel to ensure the continuity of the Program after his tenure expires. In addition, consultants that have reviewed the DOE's license application were impressed by the quality of the application.

Karen Billups, Minority Chief Counsel, Senate Committee on Energy and Natural Resources, discussed the various legislative options that include reprocessing which Senator Pete Domenici (R-NM) might be exploring to introduce prior to his departure from Congress. The discussion among the attendees touched on whether this program should be privatized, a quasi-government corporation and how will it be funded.

Meanwhile, Senator Domenici stated during a Senate Appropriations Subcommittee Energy and Water Development hearing on the DOE's FY 2009 budget, that the United States should implement a recycling or reprocessing program this year. However, he didn't specify how this program should be funded.

Marshall Cohen, Senior Director, Legislative Programs, NEI, discussed a three-pronged approach to the management of SNF presently at decommissioned and operating plant sites.

- a) Interim storage facilities until recycling and/or permanent disposal are available.
- b) Research, development, and demonstration to close the nuclear fuel cycle.
- c) Permanent disposal facility.

Cohen stated that he has been talking with various community leaders around the country on the possibility of a volunteer interim storage site(s), licensed by the NRC. There is a preference for these facilities to be privatized with a consideration of using the NWF under appropriate restrictions.

The 1982 NWPA, as amended, would have to be changed as the funds paid into the NWF are for DOE to obtain a license, construct, operate and monitor a permanent repository for commercial SNF and HLRW.

Discussions took place among NWSC members regarding the new flyers, Mission and Goals and Nuclear Waste Disposal Program (attached) to replace the flyer, “Six Elements to Success.” The new flyers reflect the Coalition’s proactive vision and future policy regarding the nuclear waste disposal program. It was agreed upon to reorganize under Next Steps, subheading “Interim Facilities” in the Nuclear Waste Disposal Program flyer to read:

“Centralized Interim Facilities. The NWSC believes that an effective disposal program should consist of: (1) A permanent repository; (2) an integrated transportation plan; and (3) centralized interim facilities that advance and complement the permanent repository while addressing near-term needs. Administration and legislative efforts should ensure that this moves forward expeditiously.

The NWSC generally supports the recommendation in the FY 2008 Consolidated Omnibus Appropriations Act directing the DOE to develop a plan to take custody of spent fuel currently stored at decommissioned reactor sites for consolidation at an existing federal site, operating reactor site(s), or sites that volunteered to host GNEP facilities. In addition, DOE should also address the need for interim storage and disposal of greater-than-class-C waste.”

Next Telephone Conference Call

Please note that the next NWSC/NEI/NARUC telephone conference call will be held on **Wednesday, March 26, 2008, 10:00 a.m. ET, (9:00 a.m. CT).**

PLEASE SHARE THIS MATERIAL WITH OTHER INTERESTED PARTIES IN YOUR ORGANIZATION