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October 31, 2008

NWSC Update

Congressional Activities

Nuclear Waste Disposal Program: The fiscal year (FY) 2009 Continuing Resolutions (CR) that runs through March 6, 2009 provides \$386.4 million for the nuclear waste disposal program (Program). That is same funding level as FY 2008 – allocating \$185.4 million from the Nuclear Waste Fund (NWF) and \$201 million for Defense Nuclear Waste Disposal (DNWD).

Recap: The Administration requested \$494.7 million for FY 2009 for the Program -- \$247.3 million from the NWF and \$247.4 million for DNWD. The House approved full funding request from the NWF and for DNWD, whereas the Senate cut the funding by \$50 million to \$197.4 million for defense disposal and \$193 million for the civilian program. However, faced by a veto threat by the Administration regarding the FY 2009 Department of Defense appropriations request, Congress restored \$25 million for defense disposal in the Authorization but not in the Appropriations bill.

Nuclear Regulatory Commission (NRC): The NRC requested in its FY 2009 budget \$37.3 million from the NWF to review the Department of Energy's (DOE) license application. However, the CR provides only \$29 million, the same funding level as FY 2008.

Background: The NRC requested from the Administration \$87.3 million from the NWF and was granted \$37.3 million in its budget request to review the license application. The House Appropriations Committee then added another \$36 million from the NWF to the NRC's budget. However, the Senate Appropriations Committee kept the same funding level as requested by the NRC.

S.3661: Senator George Voinovich (R-OH) introduced on October 1 the, "U.S. Nuclear Fuel Management Corporation Act of 2008." The bill proposes to create a quasi-government corporation (Corporation) that will be governed by a seven member Board of Directors, appointed by the President, which assumes responsibilities presently carried out by DOE/Office of Civilian Radioactive Waste Management (OCRWM) with respect to the overall management of the Program and the NWF.

The bill would authorize the Corporation for the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, interim storage facility, monitored retrievable storage facility, reprocessing facility, fuel fabrication facility, or test and evaluation facility constructed, except that the limitations imposed on a monitored retrievable storage facility shall not apply to an interim storage facility developed by the Corporation.

The Corporation would also have authority to assume DOE's existent contracts responsibility and with future commercial nuclear power plants operators not yet licensed by the NRC. The Corporation will not assume responsibility until 15 years after the date of enactment of this bill for failure to perform under the contracts to dispose of SNF from nuclear plant sites.

S.3661 was cosponsored by Senators Lamar Alexander (R-TN), Pete Domenici (R-NM), Elizabeth Dole (R-NC) and Lisa Murkowski (R-AK). For further detail, see attached bill. Senator Dole has since lost her seat in the U.S. Senate.

Department of Energy (DOE)

Contract Award: Late October, DOE awarded a \$2.5 billion management and operating contract to USA Repository Services Corporation (RSC) to support DOE/OCRWM in a broad scope of work to obtain a license and complete the permanent repository. RSC was given a five-year contract, with an additional five one-year options that could carry through March 31, 2019.

The new management team includes two principal subcontractors – Shaw Environmental and Infrastructure, Inc., and AREVA Federal Services. RSC contract activities will include:

1. Providing management expertise and support for the completion of repository design.
2. Addressing questions or requests for additional information from the NRC on the license application.
3. Supporting DOE's activities in the licensing process.
4. Operating the Yucca Mountain site.
5. Providing construction management and integration support.

Both firms have worked previously as subcontractors on the permanent repository. AREVA already holds a contract to develop the transportation, aging and disposal waste canisters.

RSC would replace Bechtel-SAIC, which has served as chief management contractor on the Yucca Mountain project since February 2001, whose contract expires March 31, 2009.

Standard Contract: DOE has made the standard contract and new reactor amendment (collectively known as a disposal contract) available to companies that have submitted a combined construction and operating license (COL) application to the NRC. Some of the utilities that have submitted a COL application to the NRC may have already or are in the process of executing a new standard contract with DOE.

Under the 1982 Nuclear Waste Policy Act, as amended, (NWPA) a utility must have a contract with DOE for the disposal for SNF and HLRW in order to receive a license to build and operate a new nuclear power plant.

Surface Transportation Board (STB): The STB will be holding a public hearing on Thursday, December 4 in Las Vegas, Nevada regarding DOE's application to construct a rail line from Caliente to the Yucca Mountain site in Nevada.

The STB does not normally hold public hearings when reviewing these applications but Charles Nottingham, Chairman, STB, recommended to the two other board members to hold a public hearing after meeting with Senator Harry Reid's staff.

Record of Decision (ROD): In July 2008, DOE issued a Record of Decision and Floodplain Statement of Findings – Nevada Rail Alignment for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada.

Under the NWPA and the Yucca Mountain Development Act, DOE is responsible for the transportation of spent nuclear fuel (SNF) and high-level radioactive waste (HLRW) to the Yucca Mountain site. In its final supplemental environmental impact statement (EIS) DOE analyzed the potential environmental impacts from construction and operation and eventual closure of the Yucca Mountain repository. The EIS further analyzed potential impacts from national transportation of SNF and HLRW through Nevada, as well as general freight or the shared-use option on a railroad built along the Caliente and Mina rail corridors. The final analyses concluded that the potential impacts associated with the repository design and operational plans are similar in scale in the impacts along both rail alignments.

DOE also recognized in the EIS that constructing and operating a railroad along the Mina corridor would be less expensive to build, tend to result in less land disturbance and cross fewer private land parcels and grazing allotments than with the Caliente corridor. However, DOE also recognized that an alignment within the Mina corridor would need to cross the Walker River Paiute Tribe Reservation who withdrew their consent to the transportation of SNF and HLRW across their land. Therefore, the DOE decided to construct and operate a railroad within the Caliente corridor and allow shipments of general freight on the rail line, known as the shared-use option.

In fulfilling its responsibilities and consistent with its tiered decision making process, DOE issued a ROD to construct and operate a railroad along a rail alignment within the Caliente corridor. Further, the Department selected common and alternative railroad segments within the Caliente corridor, as well as the construction of an interchange yard that connects with the Union Pacific Railroad mainline, an upland staging yard, maintenance-of-way facility, the Nevada Railroad Control Center and the National Transportation Operations Center.

To obtain the ROD, visit: www.ocrwm.doe.gov.

Global Nuclear Energy Partnership (GNEP): DOE released a draft programmatic environmental impact statement (PEIS) examining expansion of nuclear power in the United States, using various proposed alternative closed and open fuel cycles. The PEIS supports a proposed general decision for the United States to pursue a “closed nuclear fuel cycle.”

GNEP is part of Administration’s Advance Energy Initiative that supports safe, secure and sustainable expansion of nuclear energy worldwide. The domestic part of GNEP promotes advance nuclear fuel cycle technologies, including the potential of recycling used reactor fuel to capture the remaining energy content and reduce the volume, heat and radiotoxicity of the resulting byproducts.

A notice of the PEIS was published on October 17 in the Federal Register. That action consequently opened a 60-day public comment period on the draft analysis. DOE will hold public hearings during the comment period at 13 locations near potential future GNEP facilities starting November 17 with the last hearing being held on December 9 in Washington, D.C. For further details, visit www.gnep.energy.gov.

Environmental Protection Agency (EPA)

Radiation Standards: The State of Nevada filed a lawsuit in the U.S. Court of Appeals for the District of Columbia, asking the federal court to invalidate the established radiation standards by the EPA regarding the safe storage and disposal of SNF and HLRW at the Yucca Mountain permanent repository.

The lawsuit contends that the EPA's standards as established will not protect the environment or health of the state's residents. In a statement, Attorney General Catherine Cortez Masto, accused the EPA of working together with DOE to "steam-roll this project through licensing." She further stated that the agencies are, "ignoring science in favor of a project which presents unacceptable risks to the public."

Nevada challenged both EPA's near-and long-term radiation limits for people who may live near the permanent repository in the future.

It took the EPA more than three years to review and establish standards that are consistent with the findings and recommendations of the National Academy of Sciences (NAS) and satisfy a July 2004 court ruling to extend the standards' duration to one million years. The Yucca Mountain standards are in line with approaches used in the international radioactive waste management community. The final standards are:

- Retain the dose limit of 15 millirem per year for the first 10,000 years after disposal;
- Establish a dose limit of 100 millirem annual exposure per year between 10,000 years and 1 million years;
- Require DOE to consider the effects of climate change, earthquakes, volcanoes, and corrosion of the waste packages to safely contain the waste during the 1 million-year period; and
- Be consistent with the recommendations of the NAS by establishing a radiological protection standard for the permanent repository at the time of peak dose up to one million years after disposal.

According to the EPA, human exposure to radiation varies from natural sources, such as radon and ultraviolet radiation from the sun, and other sources, such as medical X-rays. The average annual radiation exposure from both naturally occurring and manmade sources for a person living in the United States has been estimated to be 360 millirem per year. Nevada's own radiation standard for exposures to members of the general public is 100 millirem per year from any licensed operation.

The NRC could not issue a license for a repository to the DOE until the EPA standards were in place. Before obtaining a construction license for the permanent repository, DOE must demonstrate that the project can meet the EPA radiation exposure limits.

Nuclear Regulatory Commission (NRC)

Waste Confidence Rule Revisions: The NRC is seeking public comment on proposed revisions to its waste confidence findings, in particular whether the findings should continue to include a timeframe for the availability of a repository for disposal of SNF and HLRW. The proposed revisions, published and discussed in two separate notices on October 9 in the *Federal Register*, are intended to support the agency's reviews of license applications for new commercial power reactors by resolving appropriate issues generically in rulemaking.

The waste confidence findings were first issued in 1984, subsequently revised in 1990, and reaffirmed in 1999. They state the Commission's confidence that a geologic repository would be available sometime in the first quarter of the 21st century and that SNF can be safely stored without significant environmental impacts for at least 30 years beyond the licensed operation of a reactor, including the term of a renewed license. These findings are codified in NRC regulations at 10 CFR 51.23(a).

The proposed revisions would predict that repository capacity will be available within 50 to 60 years beyond the licensed operation of all reactors, and that SNF generated in any reactor can be safely stored without significant environmental impact for at least 60 years beyond the licensed operation of the reactor.

The agency is also seeking public comment on whether a timeframe for the availability of a repository should be included at all. According to the NRC, eliminating the 2025 timeframe is not intended to signal a lack of confidence that a repository will be available by that date. The NRC also recognizes that a repository can only be available by that date if the agency ultimately approves the DOE's license application to construct a repository at Yucca Mountain. That decision must await the results of the NRC's technical review and the outcome of a licensing proceeding on the application.

According to the NRC, it does not believe the existence of the 2025 date undermines its oft-stated commitment to be an "impartial adjudicator" of the Yucca Mountain application. However, the agency believes that deleting this date will remove even an appearance of prejudgment in a licensing proceeding for Yucca Mountain.

The agency further stated that revising its findings on the period for safe storage of spent fuel reflects the agency's confidence in the safety and security of spent fuel storage in pools and dry casks. According to the NRC, its confidence is bolstered by operational experience over the past two decades, as well as extensive security assessments performed and security enhancements ordered by the agency in the aftermath of the Sept. 11, 2001, terrorist attacks.

Public comments on the proposed revisions will be accepted through December 8. For further details visit: <http://www.regulations.gov>.

License Application Hearing: The NRC announced the opportunity to request a hearing on the DOE's license application to construct a geologic repository for SNF and HLRW at the Yucca Mountain site in NV.

DOE submitted its application June 3. On September 9, the NRC staff determined that the 8,600-page application contained sufficient technical information for the agency to docket it and initiate its comprehensive safety review. At the same time, the NRC staff adopted DOE's Environmental Impact Statements for the repository but requested additional information on some groundwater analyses.

A Pre-License Application Presiding Officer Board has issued rulings to prepare participants for the Yucca Mountain hearing. The Atomic Safety and Licensing Board Panel anticipate that several three-judge Boards will be appointed to hear contentions on various subjects regarding the license application. The hearings will be held at the NRC's Las Vegas Hearing Facility as well as NRC headquarters in Rockville, Md.

A notice for a potential hearing was published in the *Federal Register* in October. Petitions to intervene and requests for a hearing must be submitted within 60 days of publication of the *Federal Register* notice to the NRC's Electronic Information Exchange (EIE) system.

Help Desk: On November 10, the NRC activated a telephone and e-mail help desk to stakeholders seeking information on license applications, including new nuclear power plants and the Yucca Mountain nuclear waste repository. Assistance will be also available for using the NRC’s Electronic Hearing Docket for adjudications before the Agency or an Atomic Safety and Licensing Board; the Electronic Information Exchange for electronic submittal of documents; including e-filings for agency adjudications, and the agency’s ADAMS public online document management system.

Until now, public requests for assistance have been handled by the NRC Public Document Room staff. However, with electronic submissions in a wide variety of licensing proceedings expected to increase dramatically, the NRC decided to create a dedicated help desk to handle requests for assistance.

According to the NRC, their goal is to be open and transparent and encourage maximum public participation in their regulatory activities.

Nuclear Waste Technical Review Board (NWTRB)

Ongoing Peer Review: Mr. B. John Garrick, Chairman, NWTRB, responded in an October 1 letter to DOE that Congress directed the Board to provide an ongoing peer review of the technical and scientific validity of DOE’s decisions and to provide advice to Congress on whether DOE activities have a solid technical and scientific foundation. In particular, Section 503 of the NWPA, instructs the NWTRB to “evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy.”

The Board’s letter is in response to Ward Sproat’s, Director, DOE/OCRWM September 14 letter where he stated that since the NRC provides a very structured process for raising and resolving license related issues, DOE does not intend to formally respond to issues regarding the license application raised by the NWTRB or others outside the context of the NRC licensing proceedings.

The NWTRB’s October 1 letter further stated that although there may be issues that overlap with those raised in the NRC’s adjudicatory proceeding, the two agencies, have very different responsibilities. Therefore, DOE’s responsibilities to the NWTRB do not change as a result of the Department’s submission of the license application to the NRC.

In a October 8 letter, the State of Nevada urged the NWTRB to continue with its advisory functions during the NRC’s review of the DOE’s license application, including technical issues discussed in the license application.

State of Nevada Letter: NV pointed in an October 8 letter to the NWTRB, that an August 2008 Sandia document, *Long-Term Corrosion Testing Plan*, acknowledges that DOE has not done the experimental work that it should have to support the claims in its license application about the corrosion resistance of the metal waste package.

The letter contends that DOE submitted the license application with full knowledge of the Sandia document that identified gaps in DOE’s current corrosion research program and lessons learned from work carried out by the Livermore National Laboratory.

The letter further states that Sandia acknowledges that the Livermore work is so suspect it is of no use and DOE does not have an experimental basis of its own on which to base corrosion conclusions about the waste package and drip shield at the permanent repository. The State of Nevada urged the Board to maintain the closest watch on these DOE activities.

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Next Telephone Conference Call

Please note that the next NWSC/NEI/NARUC telephone conference call will be held on **Wednesday, November 19, 2008, 10:00 a.m. ET, (9:00 a.m. CT).**

**PLEASE SHARE THIS MATERIAL WITH OTHER INTERESTED
PARTIES IN YOUR ORGANIZATION**