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August 18, 2009

## NWSC Update

### Congressional Activities

***Nuclear Waste Disposal Program:*** The Senate and House both recommended \$196.8M for fiscal year (FY) 2010 for the nuclear waste disposal program (Program), as requested by the Administration. \$98.4M was appropriated from the Nuclear Waste Fund (NWF), \$5M of this amount will be made available for the Blue Ribbon Commission, and \$98.4M was appropriated for defense nuclear waste disposal.

Congress appropriated \$288.3M for FY 2009, a reduction of \$92.5M for FY 2010. There are questions whether the amount requested by the Administration and appropriated by Congress is sufficient funds for the Department of Energy (DOE) to review the license application in three-four years as directed by the 1982 Nuclear Waste Policy Act, as amended, (NWPA).

*House Report 111-203* acknowledges that requested funds by the Administration terminates the Yucca Mountain nuclear waste repository and its decision has created even greater uncertainty. The funds are only for DOE to answer all relevant technical questions with regards to the license application it submitted to the Nuclear Regulatory Commission (NRC) regarding the geological repository at Yucca Mountain.

The Committee urges DOE to move forward quickly to formulate the proposed Blue Ribbon Commission to review alternative options for nuclear waste disposal. Further, the 'President's memo on Scientific Integrity' (74 Fed. Reg. 18596) dated March 9, 2009, asserted that, "The public must be able to trust the science and scientific process informing public policy decisions."

The report states that, "the elimination of particular alternatives currently being proposed by the Administration does raise concerns. Since the Department's overall strategy for the disposition and long-term storage of nuclear material hinges upon conclusions of the Blue Ribbon Commission, the analysis must be done on scientific merit using well-established scientific processes. There may be disagreement of whether Yucca Mountain is a suitable alternative, but the public investment made to date and the integrity of the scientific process warrant considering all alternatives." The Yucca Mountain site is the most studied geology on the planet, and \$10B taxpayer funds have been spent on the site and 1.5 million documents have supported the NRC's licensing of the site. Therefore, the \$5M available for the Commission is only for an analysis of alternatives that includes all options for nuclear waste disposal based on scientific merit.

The report further states that the Commission should also include appropriate representation of decommissioned reactor sites to ensure their interests are considered in the formulation of a national nuclear waste policy.

*Senate Report 111-045* acknowledges that the NWF current balance is \$22B and generates an annual interest of more than \$1B which is added to the corpus of the Fund. The report states that FY 2010 budget proposal of \$196.8M is more than adequate to cover planned activities proposed by the Administration, and it is not aware of any specific strategy to execute its statutory obligations to manage both defense and non-defense material consistent with the NWPA. Further, given the Administration's decision to terminate the Yucca Mountain permanent repository program while developing alternatives, the Committee expects the Secretary of Energy to suspend collection of payments to the NWF.

***Nuclear Regulatory Commission (NRC):*** The NRC requested in its FY 2010 budget \$56M from the NWF for the review of the license application for DOE to construct and operate a permanent repository at Yucca Mountain; however, the Senate approved \$29M, whereas, the House recommended \$56M.

***House of Representatives Letter:*** Representative Doc Hastings (D-WA) lead a bi-partisan group of 25 members of Congress by sending a letter on June 17, 2009, to Secretary Chu calling for the continuation of funding for the Yucca Mountain nuclear waste repository and its related NRC review of the license application.

The letter's main focus are the DOE's Environmental Management (EM) clean-up sites such as Hanford, Savannah River, Oak Ridge and Idaho, where DOE is obligated to clean-up and dispose of the legacy waste generated from the U.S. nuclear weapons program. The letter further states that Yucca Mountain is the linchpin for DOE's entire spent fuel strategy. If Yucca does not open on schedule, or if its capacity cannot be expanded, or if a reliable source of funding is not secured, then the other elements of DOE's SNF strategy will collapse.

In addition, there is no "Plan B" for the disposition of DOE's inventory which is accumulating at DOE EM clean-up sites. The letter further states that, "the proposed Blue Ribbon Commission is unlikely to find a 'silver bullet solution,' since we already have over 50 studies by prestigious institutions, like the National Academy of Sciences, and Yucca still remains a suitable repository site. Any attempt to find a new repository would likely take an additional 20 years and upwards to \$15B to develop."

The Representatives again stated their strong support for increased funding for the Yucca Mountain program and reminded DOE of defense waste compliant with court-stipulated agreements for the disposal of defense waste. For further details, see attached letter.

## **Department of Energy**

***FY 2011 Budget:*** Attached is a letter the NWSC sent to Energy Secretary Chu with regards to Senator Harry Reid's (D-NV) announcement through the press that he has an agreement with the President and Energy Secretary Chu to cut off all funding for the continued review of the license application by the NRC in the Administration's FY 2011 budget request.

The NWSC August 6 letter points out that during the Secretary's confirmation hearings he stated that DOE has a legal obligation and will use the best scientific analyses to provide safe disposal of spent fuel. Failing to allow the license application to proceed would cast the whole process into political chaos and uncertainty since Congress directed DOE to submit the licensing application through the NWPA. In addition, we will find out once and for all if questions about the technical suitability and safety of the Yucca Mountain permanent repository have been adequately addressed over the 20 years of scientific studies.

The letter also points out that the withdrawal of the license application would force the Secretary to lay off the remaining 700 DOE federal and contract employees that are presently working on the license application.

***Withholding of Funds:*** In an agreement with the Nuclear Energy Institute and the National Association of Regulatory Utility Commissioners positions, the NWSC also sent a letter to DOE requesting immediate suspension of payments made into the NWF since the corpus of the Fund has more than sufficient funds to cover license application and other program activities.

According to the NWPA, Section 302 (a)(4), the Secretary is required to review annually and evaluate whether the fees collected should be adjusted upwards or downwards to provide sufficient revenue to recover costs incurred for carrying out Program activities. The NWSC also requested for DOE to carry out a review of the fee adequacy of the NWF to account for the status and overall cost of the Program. Letter attached.

***Confirmation:*** On Friday, August 7, the Senate confirmed Warren “Pete” Miller as DOE’s Assistant Secretary of Energy. His proposed appointment as Director of DOE’s Office of Civilian Radioactive Waste Management is on hold.

Miller holds a Ph.D. in nuclear engineering from Northwestern University and was Deputy Laboratory Director at the Los Alamos National Laboratory in New Mexico. Since retiring from Los Alamos, he has been on the faculty of Texas A&M University.

Upon confirmation, Miller promptly announced that former NRC Commissioner Peter Lyons will serve as his Principal Deputy Assistant Secretary and Shane Johnson will be Chief Operating Officer.

## **Nuclear Regulatory Commission**

***Waste Confidence Rule:*** In June 2009, the NRC published its final ruling amending 10 CFR 51.23(a), along with the final update and revision to the Waste Confidence Rule (WCR) findings. The Commission revised two of its findings as follows:

***Finding 2:*** The Commission found reasonable assurance that sufficient mined geologic repository capacity will be available within 50-60 years beyond the licensed life for operation (which may include a revised or renewed license) of any reactor to dispose of commercial high-level radioactive waste (HLRW) and spent nuclear fuel (SNF) originated in such reactor and generated up to that time.

***Finding 4:*** The Commission found reasonable assurance that, if necessary, SNF generated in any reactor can be stored safely and without significant environment impacts for at least 60 years beyond the licensed life for operation (which may include a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin, and either onsite, or offsite independent spent fuel storage installations.

The NRC stated that it believes the nation would know by the year 2025 whether the Yucca Mountain permanent repository will be constructed and operational, and it is “reasonable to assume that a new repository program would be available by 2050-2060.”

**Update:** The NWSC October 2008 comments to the NRC were that we found no fault with the revised WCR findings 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 a reactor.

However, the NWSC encouraged NRC staff to take into consideration in its WCR the approximate \$758 million paid annually into the NWF by the ratepayers for the removal of SNF and HLRW from existing nuclear plants sites and the increase of this amount with the construction of new nuclear power plants. In addition, the WRC should also take into consideration the additional cost that will be incurred by the nation's ratepayers for the indefinite stranding of SNF and HLRW at existing and future commercial nuclear power plants and decommissioned plants, 50 to 60 years beyond the licensed operation of all reactors or 100 years as stated in the NRC's *Federal Notice*.

The NWSC further encouraged the NRC not to depart from its original 1984 decision to use a specific timeframe as a basis for assessing the degree of assurance for the availability of a geologic repository for the removal of SNF and HLRW from decommissioned and nuclear plant sites to a geologic repository.

**Background:** Waste confidence is a set of regulatory findings by which the NRC states its assurance that following a reactor's final shutdown, SNF or HLRW can be safely managed in an environmentally sound manner until a geologic repository becomes available. The Rule cannot be raised in individual licensing actions on nuclear power plants and used fuel storage facilities.

**DOE's License Application:** The NRC voted 4-0 late June to uphold the decisions of three Construction Authorization Boards (Boards) on all but three contentions filed in the licensing proceeding for the proposed repository at Yucca Mountain. The Boards admitted approximately 300 contentions and NRC staff appealed 32 of the admitted contentions. Clark County, NV, also appealed to the NRC a denial by the Boards of two of its contentions.

The NRC rejected three contentions that were previously admitted by the Boards. These include one contention from NEI regarding volcanism at the repository site, as well as two Nevada contentions challenging DOE's managerial competence and institutional integrity. The NRC upheld the Boards' decision to reject the two Clark County contentions.

**Decommissioning Fund:** The NRC staff will meet with industry, state officials and members of the public on Thursday, August 20, to discuss the agency's oversight of ensuring proper decommissioning funding for commercial nuclear reactors; the draft Regulatory Guide 1229 (DG-1229), "Assuring the Availability of Funds for Decommissioning Nuclear Reactors;" and the reasoning behind the Guide's approach, which currently is out for public comment.

The meeting which is open to the public, and available via the Internet, is scheduled to begin 9 a.m., at the Bethesda Marriott Hotel, Bethesda, MD. The NRC staff will explain the Biennial Decommissioning Funding Report Analysis process and the draft DG-1229, including:

- a) How the NRC determines the minimum decommissioning formula; how the NRC determines if a nuclear power plant licensee demonstrates reasonable decommissioning funding assurance; the steps taken to address funding shortfalls; and what the NRC expects from nuclear plant licensees.
- b) The history behind NRC's decommissioning funding assurance regulations; and the reasons for proposed changes in the draft DG-1229.

In June 2009, the Agency contacted 18 nuclear power plants to clarify how the companies will address the recent economic downturn's effects on funds to decommission reactors in the future.

The NRC stated its analysis of decommissioning funds includes a conservative growth estimate to account for inflation and market instability. Review of the latest reports on funding assurance suggests that the 18 plants must adjust their decommissioning funding plans.

Nuclear power plant operators are required to set aside funds during a reactor's operating life to ensure the reactor site will be properly cleaned up once the reactor is permanently shut down. Decommissioning funds are separate from other plant assets and are protected by law for clean-up activities.

***Annual Security Inspection Report:*** The NRC has made available to the public an unclassified version of an annual report to Congress outlining the previous year's security inspection program. The report is required under the Energy Policy Act of 2005.

The report covers the NRC's security inspection program, including force-on-force exercises, for commercial nuclear power reactors and certain nuclear fuel cycle facilities for calendar year 2008.

According to the report, the NRC conducted 182 security inspections at nuclear power plants and Category I fuel cycle facilities with spent nuclear material in 2008. Of those inspections, 24 were force-on-force inspections, which use a well-trained mock adversary force to test a facility's ability to respond to threats.

The security inspections identified a total of 133 findings, of which 125 were of very low security significance and eight were of low-to-moderate security significance. Details of the findings are considered sensitive and not released to the public.

The report also contains information on programmatic improvements made as a result of a videotape of sleeping security officers at the Peach Bottom nuclear power plant in Pennsylvania, a discussion of corrective actions taken after some force-on-force inspections, and the primary objectives of the Category 1 security oversight program. To obtain further details, go to: [www.nrc.gov](http://www.nrc.gov).

## **Nuclear Waste Technical Review Board**

***September Meeting:*** The Nuclear Waste Technical Review Board (NWTRB) will meet at National Harbor, Maryland, on Wednesday, September 23, 2009, to discuss the implications of alternative technological strategies for the management and disposal of SNF and HLRW. The Board will receive an update on the Fuel Cycle Study being conducted at the Massachusetts Institute of Technology, and a panel of industry representatives will discuss their proposals to DOE for recycling, reprocessing, and burning SNF in fast reactors. The Board has invited a representative of the Nuclear Energy Agency to present an overview of efforts in other countries to manage and dispose of nuclear waste.

Information presented at the meeting will be used by the NWTRB as part of its ongoing effort to inform Congress, DOE, and the proposed Blue Ribbon Commission of technical issues and questions that should be addressed related to waste-management alternatives. The NWPA requires the Board to conduct an independent review of the technical and scientific validity of DOE activities related to nuclear waste management, including transporting, packaging, and disposing of SNF and HLRW.

***Continued Technical Review:*** In separate letters to Congress, the NWTRB pointed out that it has performed unbiased technical peer review of the nuclear waste management for the last 20 years. The NWTRB believes that it can continue to make a substantial and important contribution by performing technical analysis of waste management options that may be identified in the future.

The June 26 letter to Congress and Secretary Chu points out that the Administration's announcement to terminate the Yucca Mountain project while developing alternatives, prompted the NWTRB to look at the scientific and engineering implications of this decision. The Board points out those technical lessons from the Yucca Mountain repository may be of value regardless of how the nation deals with nuclear waste in the future.

The NWTRB supports the Secretary's decision to continue the licensing process that allows a full adjudication of the technical issues that allows all the parties to the process, including the State of Nevada, to identify and support their contentions, so that the maximum scientific and engineering benefit can be derived from the effort. The Board further stated that it remains committed to find the best means forward for dealing with the nation's nuclear waste challenges, including short-and intermediate-term storage, recycling and waste reduction strategies. To obtain further details, go to: [www.nwtrb.gov](http://www.nwtrb.gov).

## **Lawsuits**

The U.S. Court of Appeals for the Ninth Circuit upheld the NRC's Design Basis Threat (DBT) regulation. The lawsuit brought by the State of New York, Public Citizen and the San Luis Obispo Mothers for Peace, challenged that the DBT regulations did not adequately consider the threat of airplane attacks against nuclear plants.

However, the Court found the DBT adequately protected against a reasonable level of threats against a nuclear plant's security, including plane attacks. The Court upheld the DBT regulations because the NRC can rely on preventative and coordinated actions by other federal agencies and mitigative and protective responses to such attacks by power plant and other personnel.

The DBT regulation was also challenged because it is partly based on safeguards information. The Court held that the NRC has acted properly in basing the rule on such information, noting that previous acts by Congress provided for withholding it from public disclosure.

## **Western Governors' Association (WGA)**

Stating there are increasingly uncertainties about the DOE current permanent repository program, the governors of 19 western states adopted a Resolution in June that seeks to deter this Administration and private energy companies from building any interim storage facilities in a western state.

The Resolution further states should centralized interim storage sites will be necessary, no such spent fuel storage site be located in a western state without consent of the governor from that state, and DOE has to provide reasonable transportation, safety and emergency response assurances to the western states.

Since the creation of interim storage sites would be a direct result of the federal government's failure to remove SNF and HLRW from plant sites, it is the federal government's responsibility to ensure adequate preparation for shipments to these facilities, coordination with states, and provision of adequate funding to reimburse the states for costs incurred with shipments to any interim storage facility. Therefore, the Governors consider it to be entirely appropriate to use the NWF to pay for these activities.

The Resolution also stated that without a permanent disposal site, there is no guarantee than an interim storage site will be temporary. To obtain full details, go to: [www.wga.org](http://www.wga.org).

### **September 21-22 Meeting**

Attached please find registration material together with a preliminary agenda for the Monday and Tuesday, September 21-22 meeting being held at the Holiday Inn Central, 1501 Rhode Island Avenue, N.W., Washington, D.C. The purpose of the meeting is to have an update from the Department of Energy (DOE) with regards to program activities, an overview from states and congressional staff perspective with regards to the changing landscape of the Program by the Administration, Senator Harry Reid's comments stating that the Administration has agreed with him to cut off all funds for the license application in the FY 2011 budget request, and language contained in the FY 2010 Senate Report No. 111-45, that the Senate Appropriations Energy and Water Development Subcommittee expects the "Secretary of Energy to suspend collection of payments to the Nuclear Waste Fund."

The program will be as follows:

- a) DOE Discussion, Chris Kouts, Acting Director, DOE/OCRWM. (Accepted).
- b) Panel Discussion States Perspective:
  - Seth Kirshenberg, Energy Communities Alliance. (Accepted).
  - Tamra Spielvogel, National Conference of State Legislatures. (Invited).
  - Christopher Whatley, Council of State Government. (Invited).
- c) LA contentions and other program issues. Michael Bauser, Nuclear Energy Institute. (Accepted).
- d) Congressional Staff Discussion:
  - Annie Caputo, Republican Counsel, Senate Environment and Public Works Committee. (Invited).
  - Bob Simon, Majority Staff Director, Energy and Natural Resources Committee. (Invited).
  - Isaac Edwards, Republican Counsel, Energy and Natural Resources Committee. (Invited).
  - Adam Rondinone, Legislative Fellow, Office of Senator Lamar Alexander (R-TN). (Accepted).
  - Kevin Lawson, Senior Policy Advisor, Office of Representative John Spratt (D-SC), Chairman, House Budget Committee. (Invited).

In addition, meetings with key Congressional leaders or their staff will be organized as well as with Energy Secretary Chu or with Assistant Secretary of Energy Warren Miller (Nuclear Energy); Mr. Peter Orszag, Director, Office of Management and Budget; as well as with Ms. Carol Browner, White House, Office of Energy and Climate Change. The Administration is frequented by those that oppose the disposal program; therefore, they should also hear from those that support the program.

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The guest room cut-off date is **Thursday, August 20**. If you are planning to attend the meeting, please make your guest room reservations prior to the 20th in order to obtain the special rate of \$195 per night, single or double.

Your participation in the meeting, Congressional and Administration visits is important. If you have not registered for the meeting, please do so ASAP.

### **Next Telephone Conference Call**

Please note that the next NWSC/NEI/NARUC telephone conference call will be held on [Wednesday, September 9, 2009, 10:00 a.m. ET, \(9:00 a.m. CT\)](#). An agenda to follow.

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PARTIES IN YOUR ORGANIZATION**