

NRC FORM 757 REV 03/10 (5-0000)		U.S. NUCLEAR REGULATORY COMMISSION
NON-CONCURRENCE PROCESS		
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL		
TITLE OF DOCUMENT Update on the Yucca Mountain Program DOCUMENT SPONSOR Catherine Henry NAME OF NON-CONCURRING INDIVIDUAL Janet F. Kotrs	ADAMS accession NO. ML183146391 SPONSOR PHONE NO. 301-492-3854 PHONE NO. 301-492-3129	
<input checked="" type="checkbox"/> DOCUMENT AUTHOR <input type="checkbox"/> DOCUMENT CONTRIBUTOR <input type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE		
TITLE Senior Project Manager ORGANIZATION NRC/DOE/PAES		
REASONS FOR NON-CONCURRENCE <p>I have prepared and revised various versions of this memorandum. When, on June 14, 2010, the Chairman ordered the Director of NRCSS to postpone issuance of Safety Evaluation Report Volumes 1 and 3, HLWRS and NRCSS managers became concerned the entire Commission may not be fully aware of the policy, legal and budgetary consequences of such redirection. Some believed that a diligent staff, struggling to honor conflicting obligations, needed programmatic and policy guidance from the entire Commission armed with a fair assessment of the facts. I was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed. Later, in September, it became clear that, rather than postpone issuance of individual SER volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman, through OEDO and the CPO, told staff that all work on the SER must stop, including Volume 3 on post closure safety, which was already complete, and undergoing management review. Written guidance to this effect appeared later, in an October 4, 2010 memorandum. The Chairman later met with the Yucca Mountain Team on October 12, 2010. He explained that the decision to shut down the staff's review of the application was his alone and that staff should move to orderly closure of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and the Commission has yet to issue a decision on whether DOE may legally withdraw the application. Over time, repeated rounds of comment (internal and otherwise) from OEDO, the CPO and the General Counsel were incorporated. Time and again these comments diluted or contradicted the direct language offered by NRCSS and ASLEP staff. Both staff sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down a complex and valuable national program and infrastructure while still supporting an ongoing hearing process. This now long-suffering memorandum is characterized as a "status report." Throughout its tortured evolution, I continued to make numerous changes during a most unorthodox process, despite growing reservations, so long as the description of the program's history and status remained reasonably accurate. At this juncture, I can no longer support this memorandum. I believe</p>		
<input checked="" type="checkbox"/> CONTINUED IN SECTION D		
SIGNATURE Janet Helen Kotrs		DATE 2/11/2011

REVISIONS: 0-0000

Use ADAMS Template NRC-000

DATE ON FILE: 2/11/2011

ENCLOSURE 3

NRC FORM 757
REV 10-1992
(2-2002)

U.S. NUCLEAR REGULATORY COMMISSION

NON-CONCURRENCE PROCESS

FILE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.
ML103146301

SECTION OR CONTINUATION PAGE

CONTINUATION OF SECTION

☒ A ☐ B ☐ C

that, in its present form, this memorandum appears to imply that the NRC staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a fair and impartial hearing process for that application. It has been my experience that members of the NRC staff, who have conducted a fair, independent and technically sound safety review, and who worked earnestly to prepare the required Safety Evaluation Report, stood down from that duty only with enormous reluctance. As currently drafted, this memorandum makes no reference to the facts surrounding the Chairman's termination of the NRC staff's review of the Yucca Mountain License application. Absent this crucial content, a reader is left with the mistaken impression that this termination and the "orderly shutdown" of the NRC staff's licensing review and hearing process was staff's preferred and well-considered course of action, initiated by the NRC's technical staff. Nothing could be further from the truth. Furthermore, absent proper content, the reader would also conclude that NRC staff prepared this memorandum to inform a passive Commission about "staff's" course of action, after the fact, to alert the heretofore uninvolved Commission about problems and difficulties to which "staff's" course have led. For these reasons, I must respectfully withdraw my concurrence of December 2, 2010.

NRC FORM 757 (2-2002)

Use ADAMS Template NRC-608

Revised 01/05/06, 02/07/08

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103140391

SECTION II - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR

(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)

NAME

King Stablein

TITLE

Chief, Projects Branch B, Division of High-Level Radioactive Safety

PHONE NO.

301-492-3199

ORGANIZATION

NMSS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

☐ I HAVE NO COMMENTS

☒ I HAVE THE FOLLOWING COMMENTS

I agree wholeheartedly with Dr. Kotra's comments and agree specifically that this status report lacks the necessary context and information to adequately characterize the confusion, chaos, and anguish occasioned by the Chairman's unilateral decision to disrupt the orderly process of SER development.

My nonconcurrence comments will amplify some of the points made by Dr. Kotra.

☐ CONTINUED IN SECTION D

SIGNATURE

King Stablein

DATE

2/2/11

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103140391

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

- see attached -

☐ CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

2-4-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

2-4-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

☐ CONCURS

☒ NON-CONCURS

☐ WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

☐ WANTS NCP FORM PUBLIC

☒ WANTS NCP FORM NON-PUBLIC

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT Updated on the Yucca Mountain Program		ADAMS ACCESSION NO. ML110540412	
SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR			
NAME Catherine Haney		PHONE NO. 301-492-3554	
TITLE Office Director			
ORGANIZATION NMSS			
ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.) Section C revised on March 01, 2011, to reflect that the non-concurring individual would like the NCP Form to be made public and that he/she non concurs on the document. <p style="text-align: center;">See Attached</p>			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE - DOCUMENT SPONSOR <i>Catherine Haney</i>	DATE 3-1-11	SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>	DATE 3-1-11
NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):			
<input type="checkbox"/> CONCURS		<input checked="" type="checkbox"/> WANTS NCP FORM PUBLIC	
<input checked="" type="checkbox"/> NON-CONCURS		<input type="checkbox"/> WANTS NCP FORM NON-PUBLIC	
<input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)			