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Sent: Thursday, December 19, 2013 11:10 AM
To: Rulemaking1CEm Resource
Subject: FW: Waste Confidence - Continued Storage of Spent Nuclear Fuel, Docket ID No. NRC-2012-0246
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From: Elizabeth Enriquez [<mailto:eenriquez@co.nye.nv.us>]
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To: RulemakingComments Resource
Cc: Cash Jaszczak; Michael Voegele; Jo(e) Ziegler; Lewis Lacy
Subject: Waste Confidence - Continued Storage of Spent Nuclear Fuel, Docket ID No. NRC-2012-0246

Attached are comments on Waste Confidence -- Continued Storage of Spent Nuclear Fuel, Docket ID No. NRC-2012-0246 from the Nye County, Nevada, Nuclear Waste Repository Project Office.

Please contact our office with any questions



Thank you,
Elizabeth Enriquez
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December 18, 2013

Secretary
U.S. Nuclear Regulatory Commission (NRC)
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Subject: Waste Confidence – Continued Storage of Spent Nuclear Fuel, Docket ID No. NRC-2012-0246

Dear NRC Secretary:

The Nye County, Nevada Nuclear Waste Repository Project Office (NWRPO) appreciates the opportunity to provide comments on the NRC draft rule and Generic Environmental Impact Statement on Waste Confidence (GEIS) and continued storage of spent nuclear fuel as requested by the Nuclear Regulatory Commission (NRC) in a September 13, 2013 Federal Register Notice(FR 56776). Our comments, in large part, reiterate points made to NRC staff in previous comments made by the NWRPO to the NRC staff on previous related matters. In particular, these include comments made by the NWRPO in our December 28, 2012 letter to NRC regarding Waste Confidence GEIS scoping; comments made in our November 25, 2008 letter to the NRC regarding the “Update and Proposed Revision to the Waste Confidence Decision,” and comments made by the NWRPO in our February 16, 2012 submittal to the NRC staff regarding the NRC Draft Report for Comment, Background and Preliminary Assumptions for an Environmental Impact Statement – Long-Term Waste Confidence Update, December 2011,” which echo and complement our comments contained in this letter. It is requested that NRC reconsider the comments in those documents in light of recent court rulings regarding the legality of NRC’s unilateral action to suspend the Yucca Mountain licensing process and NRC’s recent agreement to restart that process and abide by the recent writ of mandamus issued to NRC.

Waste Confidence Background – Comments on How We Got Here

Without following Federal law requiring that a repository be constructed and operated at Yucca Mountain, there is no assurance of repository availability at any time in the United States. Recent illegal actions by NRC and DOE to halt the Yucca Mountain Project led to the DC Circuit court remand of the 2010 Waste Confidence Rule.

Lawsuits

On July 5, 1977 the Nuclear Regulatory Commission denied a petition of the Natural Resources Defense Council to conduct a rule making proceeding to determine whether radioactive wastes could be generated

in nuclear power reactors and subsequently disposed of without undue risk to public health and safety.¹ The Commission stated in its denial that, as a matter of policy, it "... would not continue to license reactors if it did not have reasonable confidence that the wastes could and would in due course be disposed of safely." Not long thereafter, the State of Minnesota and the New England Coalition on Nuclear Pollution challenged license amendments that permitted expansion of the capacity of spent fuel storage pools at the Prairie Island and Vermont Yankee nuclear power plants, respectively.

In *Minnesota v. Nuclear Regulatory Commission*,² the U.S. Court of Appeals for the District of Columbia Circuit in 1979 rejected a ruling of the Atomic Safety and Licensing Appeal Board that under the National Environmental Policy Act, the requirement for a reasonable probability that when the plants' licenses expired an alternative means of disposing of the nuclear wasters would be available, found that such a finding was satisfied by a previous policy determination by the full Commission stating that alternative spent fuel repositories should be presumed to be available when needed. In rejecting this ruling, the Court of Appeals found that this policy statement did not suffice as the finding required under the National Environmental Policy Act, and directed the Commission to consider the question anew, in either an adjudicatory or informal proceeding. The Court of Appeals specified that the questions to be resolved in such a proceeding are (1) whether an alternative fuel disposal technology is reasonably likely to be developed by the expiration date of the plants' licenses, or if not (emphasis added), (2) whether there is reasonable assurance that the fuel can be stored safely in the plants' spent fuel pools until an alternative technology is reasonably predicted to become available.

In a concurring opinion, Judge Tamm emphasized that the findings ordered by the court are required by the National Environmental Policy Act and the Atomic Energy Act, and that if the Commission determined that an alternative means of spent fuel disposal is not reasonably expected to be available when the plants' operating licenses expire, the question is then whether the use of spent fuel pools is an acceptable disposal method over an indefinite period of time. The order of the points made by Judge Tamm is significant. The question of whether the use of spent fuel pools was an acceptable method over an indefinite period would only be relevant after the Commission had determined that an alternative means of spent fuel disposal was not reasonably expected to be available when the plants' operating licenses expired. In Judge Tamm's words: "I write separately to emphasize my belief that section 102(2)(C) of the National Environmental Policy Act of 1969 and section 103(d) of the Atomic Energy Act of 1954, mandate the determination that the Commission identified in this case. In addition, if the Commission determines it is not reasonably probable that an offsite waste disposal solution will be available when the licenses of the plants in question expire, it then must determine whether it is reasonably probable that the spent fuel can be stored safely onsite for an indefinite period. Answers to these inquiries are essential for adequate consideration of the safety and environmental standards of the relevant statutes."

The original Waste Confidence Decision and the first two updates shared an attribute that made them meaningful as a response to the Natural Resources Defense Council petition and the Minnesota lawsuit; it could be said that the Federal Government at least endeavored to be responsive to the situation that led to the petition and lawsuit. As long as there was a meaningful commitment to disposal, plagued as it was by inefficiency and missteps, a defensible argument could be made that there was evidence of a solution pathway. With the third update of the Waste Confidence Decision in 2010 along with NRC's illegal unilateral action to terminate the Yucca Mountain licensing process, that commitment and evidence was erased.

¹ U.S. Nuclear Regulatory Commission. 1977. *Natural Resources Defense Council: Denial of Petition for Rulemaking*. Federal Register vol. 42, no. 128, p. 34391, et seq. July 5, 1977

² U.S. Court of Appeals for the District of Columbia Circuit. 1979. *Minnesota v. Nuclear Regulatory Commission*. No 78-1269. May 23, 1979.

This GEIS makes an argument that it is most likely that a repository will be available for spent nuclear fuel within 60 years after an assumed 80-year licensed operating life of nuclear power plants. However, without an active repository program in the United States, this argument is weak. Further, dealing with the primary issue by stating that the disposal technology will be available when necessary, is exactly the approach that led to the U.S. Court of Appeals for the District of Columbia Circuit in 1979 to reject the Atomic Safety and Licensing Appeal Board ruling and find it not sufficient under the National Environmental Policy Act. Additionally, the remand of NRC's 2010 waste confidence decision was largely on the basis that evidence of a repository by any particular date does not exist. The DC Circuit ruling appears to say what NRC is unwilling to say, that disposal may not be available when a reactor's license expires (even assuming 80 years of licensed operations). So, even though NRC is having trouble admitting it, the condition noted by Judge Tamm has been met and it is time to evaluate the conditional circumstance, whether it is reasonably probable that the spent fuel can be stored safely onsite (this GEIS also considers an offsite option) for an indefinite period.

Technical Feasibility vs Repository Availability

Appendix B of the GEIS purportedly addresses two relevant topics from earlier versions of Waste Confidence decisions: the technical feasibility of a repository and availability of repository capacity.

The discussion on Technical Feasibility of a Repository suggests that there is scientific consensus that safe geologic disposal is achievable with currently available technology, that it is viable, and that acceptable sites can be identified. Unfortunately, none of those arguments is a sufficient basis for a defensible demonstration that disposal capability will be available in the United States on a schedule consistent with reasonably short storage periods following reactor license termination. Arguments about siting repository facilities in other countries are of little relevance in the United States' situation. Local communities in foreign countries have autonomy in opting to participate in repository development. In the United States the willingness of local communities appears to be overridden by State primacy, and to date, no state has shown willingness to even be considered for repository siting. Further, the stringency of the U.S. regulatory structure is not comparable to that of other countries.

While it is agreed that the Yucca Mountain license application and NRC's review showed no technical or safety reasons that a repository could not be developed, the argument that the public support for the feasibility of geologic disposal can be drawn from the experience gained in the review of the Yucca Mountain license application is preposterous. Political actions to prevent the Nuclear Regulatory Commission staff from publishing their regulatory findings serves instead as an omen portending failure should any other repository program get near to the goal of demonstrating that a repository can be developed safely. The recent announcement that NRC will complete the Yucca Mountain Safety Evaluation Report does not change the fact that political manipulation occurred and the restart of the Yucca Mountain licensing process was forced by a court ordered writ of mandamus.

Overarching Comments

1. The 2010 NRC waste confidence rule was remanded by the Court of Appeals for the DC Circuit in 2012 primarily because the NRC's analysis leading to that rule did not evaluate the environmental effects of failing to secure permanent disposal. The lack of a permanent disposal option is the direct result of the heads of the NRC and Department of Energy (DOE) taking steps to terminate the Yucca Mountain Repository despite the requirement to continue the program under Federal law in the Nuclear Waste Policy Act (NWPA). In essence, the Court said that not ever having a geologic repository is a reasonable possibility that must be addressed in an EIS because there is no certainty to the NWPA defined path to a geologic repository. The lawsuits that led to the 2010 waste confidence rule being overturned would

likely have never been filed had NRC not made the unilateral decision to terminate Yucca Mountain licensing.

2. In the interest of openness and transparency, the final rulemaking package and GEIS should recognize the fact that the Court of Appeals for the DC Circuit has now ruled that the unilateral actions directed by the former NRC chairman to suspend the Yucca Mountain licensing process were illegal. A writ of mandamus has been issued ordering NRC to restart the licensing process; and NRC has publicly stated it intends to complete and release the final Yucca Mountain Safety Evaluation Report.

3. In addition to the scenarios evaluated and analyzed, the final rulemaking package should recognize that completion and operation of a Yucca Mountain repository continues to be required by the NWPA. The waste confidence documents should also be very clear that centralized interim storage financed by the Federal government (the away from reactor scenario analyzed in the subject GEIS) is not allowed under current Federal law.

4. The environmental impact determinations that impacts would be small in almost all scenarios are accurate and should not be surprising. Storage is a largely passive activity requiring a relatively small construction scope followed by monitoring. Assuming institutional controls to exist in perpetuity, guarantees impacts to be small. Any responsible implementer (e.g., utilities) and regulator (e.g., NRC) would make sure of that. The real issue for this analysis is whether or not a “no institutional control” scenario must be evaluated in more detail. NRC states that such a scenario is not reasonable and points to its comments on the Yucca Mountain EIS, where a no institutional control scenario was evaluated, that it has not changed its opinion on the reasonableness of such a scenario. Regardless of reasonableness, NWRPO agrees with NRC that reevaluation of such a scenario is unnecessary.

However, the reference to such a scenario in GEIS section 1.8.3, Analysis Assumptions, should be expanded to explicitly acknowledge that if all maintenance and monitoring of spent fuel storage was to end, after 1,000 years or so at some locations, environmental impacts would be large. This assumes no human action to keep storage facilities maintained and safe or even action to avoid impacts. Any new analysis would yield similar results. Perhaps the no institutional control scenario is speculative and not reasonable as NRC states, but the GEIS should at least acknowledge that a repository scenario under the same no institutional control assumptions results in extremely small impacts. At a repository under Yucca Mountain standards and likely any other future standard, the environmental and safety impacts for 10,000 years and beyond, even assuming no human intervention, would be a very small radiation dose to a reasonably maximally exposed individual. Essentially there would be no human health and safety impacts from repository disposal.

5. Section 1.8, Analytical Approach, should discuss a scenario of completing the Yucca Mountain repository, as required by Federal law. That scenario would have the least cumulative environmental impacts when compared to the scenarios analyzed in the Draft GEIS. It may be unnecessary to repeat the analysis in the Yucca Mountain EIS, but reference should be made to the Yucca Mountain EIS results. Otherwise, this GEIS would evaluate one scenario that is not allowed by Federal law while ignoring the only scenario that is required by Federal law. Furthermore, in the scenarios analyzed in the Draft GEIS, comparison should be made in the impact assessment sections to show the difference in cumulative impacts between a Yucca Mountain scenario and the other scenarios analyzed. In particular, the comparative analysis should recognize that without Yucca Mountain, or some other repository in the near term, multiple transportation campaigns will be required. It should also be recognized that without Yucca Mountain, all spent fuel will have to be repackaged after it is in dry storage for ultimate repository disposal. In the Yucca Mountain scenario, a significant portion of the spent fuel will be loaded by the utilities in transportation, aging, and disposal canisters and disposed directly without repackaging. It is unlikely (and absolutely unknown) what type of packaging would be required for any alternative

repository option, should one ever be developed. The ability to dispose large waste packages may be unique to Yucca Mountain. With the recent writ of mandamus ordering NRC to restart the Yucca Mountain licensing process, it is unclear how NRC can continue to flout Federal law and ignore the Yucca Mountain alternative in any proper NEPA analysis.

6. The GEIS section 1.8.3, Analysis Assumptions, assumes that spent fuel in dry cask storage systems is moved to new dry casks every 100 years during the long-term and indefinite storage periods. In other GEIS sections it is stated that the 100-year replacement cycle is a conservative estimate and that replacement may not need to occur as frequently. For instance, it is noted in Appendix B that NRC is making the 100-year replacement assumption, “even though studies and experience to date do not preclude a longer service life.” NRC should acknowledge that future spent fuel storage studies are planned as a joint effort between the Department of Energy and the Electric Power Research Institute. These multi-decade studies should be described in the GEIS and a commitment made by NRC to stay involved in the studies and review the results on a real-time basis. If at any time should there be indications that spent fuel safety requires actions other than assumed in this GEIS, NRC should commit to relook at its waste confidence decisions. On the other hand, if the study results show spent fuel to be safe without 100-year repackaging, NRC should also update the assumptions in this GEIS. In any case, NRC should acknowledge the importance of collecting empirical data on spent fuel over many decades to verify the analytical assumptions in this GEIS.

7. The timeframes evaluated in the GEIS are confusing. This is because the discussion flip-flops between an analytical model that is forward looking only, but also includes discussion of when Dresden fuel would enter the short term continued storage phase. The only time waste confidence determinations will ever be used is during (forward looking) facility specific licensing proceedings for reactors or interim storage facilities. Safety and environmental impacts for the period of the license will be the subject of a facility specific NEPA evaluation. Waste confidence addresses the period after the licensed facility life. While the phases identified are a perfectly reasonable analytical scenario, spent fuel is currently under NRC licenses and will remain under NRC licenses until it is disposed in a geologic repository. In essence, no spent fuel will ever reach any continued storage phase. New or renewed licenses will be issued instead that ensure the fuel's safety.

NWRPO suggests that the waste confidence documents be revised to address forward looking analysis only. It doesn't matter when Dresden fuel or any other spent fuel will enter the short term continued storage phase, as long as all fuel is evaluated. Added to the confusion is the reference to the recent DOE strategy document that includes unsupported declarations of when interim storage or repository disposal capacity will be available. Since issuance of the DOE strategy, there has been no action by DOE to implement either an interim storage facility or a repository. The proposed rule and GEIS already show spent fuel to be safe for all extended storage phases and that is enough. What would be more reassuring to the public would be for the Federal government to do something that leads to spent fuel disposal, but of course, without Yucca Mountain, there is nothing to point to.

NWRPO Supporting and Other Detailed Comments

1. Rule Package, FR 56779, first column towards bottom. In the discussion of the law suits that led to the 2010 waste confidence rule remand, discussion should be added that describes NRC's illegal actions terminating the Yucca Mountain licensing process. NRC is currently under a writ of mandamus to restart the licensing process and has announced it will complete the Yucca Mountain Safety Evaluation Report.

2. Rule Package, FR 56791, middle column towards bottom. The accurate, but incomplete, statement is made, “The NRC's review [Yucca Mountain license application] did not identify any issues that would challenge the feasibility of geological disposal.” A statement should be added that the Yucca Mountain

license application and NRC staff review of that application have shown a safe repository to be technically feasible.

3. Rule Package, FR 56794, first column towards bottom. The conclusion that repository disposal is feasible within 60 years after reactor operating life is correct, but the best reason for that conclusion should be added. The Yucca Mountain license application and NRC staff review of that application have shown a safe repository to be technically feasible.

4. Rule Package, FR 56799, middle column, Issue 1. NWRPO believes the rule should not include a statement about the timeline for repository availability. As stated in the FR text, "Although conclusions about repository availability have been included in Waste Confidence proceedings since 1984, these statements are not necessary to the environmental review or for fulfilling the NRC's NEPA obligations." More importantly, because all phases of continued storage are shown to have small environmental impacts, no statement regarding repository availability within any particular timeline should be included.

5. Rule Package, FR 56799, last column, Issue 3. NWRPO believes the discussion section of the rule package should contain enough information that it can be used as a stand-alone document. The technical analysis from the GEIS should be included in the rule package to the extent necessary to provide a complete picture of waste confidence.

6. GEIS Section ES.9, pp. xxvii and xxviii. The discussion of the continued storage timeline in this section, without the confusing references to Dresden fuel and the DOE Used Fuel Strategy, makes more sense that the discussion in section 1.8.2. Consideration should be given to deleting the confusing information in section 1.8.2.

7. GEIS, Section ES.19, p. lxii. It's difficult to understand how the NRC unilateral action to terminate the Yucca Mountain licensing process, that led to the lawsuits resulting in the remand of the 2010 waste confidence rule, would not be included as an area of controversy. At the time of the draft GEIS, it was the subject of ongoing litigation, and subsequently the court has issued a writ of mandamus to NRC that it must restart the Yucca Mountain licensing process.

8. GEIS Section 1.1, p. 1-3, lines 5-18. This is a discussion of the court cases that led to the ruling that an EIS was needed to address the effects of failing to secure permanent disposal. It is noted that the law suits were filed "in response to the 2010 [waste confidence] rulemaking." In essence, the Court said that not ever having a geologic repository is a reasonable possibility that must be addressed in an EIS because the NWPA defined path to a geologic repository is not currently available. The lawsuits that led to the 2010 waste confidence rule being overturned would likely have never been filed had NRC not made the unilateral decision to terminate Yucca Mountain licensing. In the interest of openness and transparency, the GEIS should recognize the fact that the Court of Appeals DC Circuit has now ruled that the unilateral actions directed by the former NRC chairman to suspend the Yucca Mountain licensing process were illegal. A writ of mandamus has been issued ordering NRC to restart the licensing process; and NRC has publicly stated it intends to complete and release the final Yucca Mountain Safety Evaluation Report. It is revisionist history to not recognize NRC's actions that led to the most recent waste confidence law suits and the eventual court ruling remanding the 2010 waste confidence rule.

9. GEIS Section 1.2, p. 1-4, lines 27-29. The reference to DOE expressing its intention to provide repository capacity by 2048 should be removed. If that is the basis for NRC's conclusion that a repository will be available within 25 to 30 years, then it should not be believed. The DOE timeline is in its used fuel strategy document, but there is no basis for that timeline. In fact, DOE has taken no steps to ensure a repository will be available subsequent to its shutdown of the Yucca Mountain Project or issuance of its strategy document. The only way a repository will be available in that time frame (within 25-30 years) is

if Yucca Mountain is completed. This GEIS should not cite DOE's strategy document, but instead should use Yucca Mountain as an example of how a repository can be available because current Federal law requires that the Yucca Mountain repository be licensed and operated, if possible. Why would NRC's NEPA analysis ignore what is required by Federal law while at the same time assume a scenario that is not allowed by Federal law?

10. GEIS Section 1.8.2, p.1-12, Figure 1-1 and associated text. Continued Storage timeframes for analytical purposes are defined in this section. An addition to the text should emphasize that the timeframes presented are just one analytical approach that ensures all spent fuel is analyzed for the entire period before geologic disposal. Other analytical approaches could have been chosen and worked just as well. Adding such emphasis in this section might help avoid confusion in later sections of the GEIS when the continued storage phases are discussed.

11. GEIS Section 1.8.1, p. 1-15, lines 6-15 and footnote. Footnote 2 on pages 1-14 and 1-15 is a good addition to the review draft of the GEIS. The discussion regarding the no-action alternative in the Yucca Mountain Final EIS (about half way down the second page of the footnote on p. 1-15), however, has some factual errors. First, the reference should be to the Final EIS (2002) versus the 2008 reference. The 2008 document is the Supplemental EIS and has no new no-action analysis except the update to dose conversion factors to estimate latent cancer fatalities. The FEIS (DOE 2002) is incorporated by reference in the Supplemental EIS.

The following sentences in the footnote related to the Yucca Mountain FEIS contain inaccurate statements shown in bold below.

DOE's approach to the loss of institutional controls at a dry cask storage facility was provided in its Yucca Mountain EIS (DOE 2008). In its analysis, DOE found that the loss of institutional controls resulted in catastrophic impacts for several resource areas. **These approaches to institutional controls were related to post-closure buried radioactive waste and are not relevant to the indefinite dry cask storage of licensed spent nuclear fuel considered in Waste Confidence. A dry cask spent nuclear fuel storage facility is not sited, designed, or built to avoid active maintenance like a low-level waste disposal facility.** Further, at some period beyond the closure of the disposal facility, increasing the likelihood that an inadvertent intrusion could occur. In contrast, a dry storage facility is typically a visible surface structure requiring active maintenance and security, making loss of institutional control so unlikely that it is a remote and speculative occurrence. Given that the National Environmental Policy Act does not require consideration of remote and speculative issues, this analysis has not been included in the GEIS.

In fact, the Yucca Mountain Final EIS did evaluate loss of institutional controls related to continued storage of commercial spent nuclear fuel. GEIS page 1-15, lines 6 to 15 accurately reflect what the FEIS analyzed, although the reference should be DOE 2002 (the FEIS) versus DOE 2008 (the Supplemental EIS).

The words in the footnote could be modified, as follows, to be correct.

DOE's approach to the loss of institutional controls at a dry cask storage facility was provided in its Yucca Mountain Final EIS (DOE 2002). In its analysis, DOE found that the loss of institutional controls resulted in catastrophic impacts for several resource areas. A dry storage facility is typically a visible surface structure requiring active maintenance and security, making loss of institutional control so unlikely that it is a remote and speculative occurrence. Given that the National Environmental Policy Act does not require consideration of remote and speculative issues, further analysis has not been included in this GEIS.

Perhaps a better alternative (or in addition to) the suggestion noted above for the footnote would be to expand the discussion of the Yucca Mountain Final EIS (DOE 2002) in the bullet beginning on p. 1-15, lines 6 to 15. An addition should be added after the statement beginning on line 7, "In particular, the DOE considered a specific scenario in which spent fuel and high-level radioactive waste would remain in dry storage at commercial and DOE sites and would be under institutional controls for approximately 100 years, and beyond that time, it was assumed there would be no institutional controls." The addition should pick up the point made in the footnote and provide a slight expansion. Suggested words follow.

Suggested Addition

In its analysis, DOE found that the loss of institutional controls resulted in catastrophic impacts for several resource areas.

At the end of the same bullet on p. 1-15, line 15, the following addition is also suggested.

Suggested Addition

Repeating the existing DOE Yucca Mountain Final EIS analysis would serve no useful purpose. NRC continues to believe that a no-institutional-control scenario is highly speculative and does not represent a reasonable assumption. Given that the National Environmental Policy Act does not require consideration of remote and speculative issues, the Yucca Mountain Final EIS no-institutional-control analysis has not been replicated in this GEIS.

12. GEIS Section 2.1.2.2, p. 2-14, lines 7-9. This section deals with multipurpose canisters. The cited lines begin with, "However, in the absence of a repository program . . ." This text should be modified to recognize that there is a repository program at Yucca Mountain and NRC has received a writ of mandamus to restart the Yucca Mountain licensing process. The section should also recognize the Transportation, Aging, and Disposal canisters (TADs) that are part of the Yucca Mountain Project. TADs are designed as multipurpose storage, transportation, and disposal canisters and detailed specifications exist. Because of the Federal court ruling that NRC's suspension of Yucca Mountain licensing process was illegal and must be restarted, this GEIS cannot continue to pretend that Yucca Mountain and the NMPA do not exist.

13. GEIS Section 2.1.3, p. 2-18, lines 33-35. This discussion says the Federal government supports interim storage. This is another example of the GEIS pretending that Yucca Mountain and the Nuclear Waste Policy Act do not exist. In fact, current Federal law prohibits the Federal government from construction and operation of an interim storage facility. This should be recognized in this section. The analytical scenario still makes sense based on the court order and the simple fact that interim storage is a good idea, especially if repository disposal capacity is not available. This GEIS should not cover up the fact that NRC's actions to terminate the Yucca Mountain licensing process were illegal.

14. GEIS Section 2.2.1.1, pp. 2-22 and 2-23. This section including Figure 2-4, shows the overlap of reactor decommissioning and short-term continued storage. Both periods are 60 years after reactor operations. The analytical assumption of 60 years of short term continued storage based on the 60 year decommissioning period makes more sense that dependence on a DOE strategy document that has no basis for its timelines.

15. GEIS Section 7.6, p. 7-15, Table 7-6. "Public perception" costs and benefits should not be included in NRC's cost benefit analysis (Table 7-6, GEIS 7-15). First of all these are entirely speculative and fail to consider that different members of the public have different perceptions. For example, NRC has concluded that there would be a public perception benefit to site specific review and a public perception cost to precluding such review. This could be true for part of the public opposing specific facilities,

because it would provide a facility specific opportunity for opposition to the facility. However, among portions of the public who desire efficient use of Federal resources, the opposite would be true. This part of the public would not want the facility specific licensing of facilities to undergo unnecessary and duplicative environmental reviews. So, whose perception does NRC ascribe a given cost or benefit and what is the basis for NRC's determination? The Table 7-6 perceived benefits and costs are merely a declaration without basis. Such speculation should not be included in the GEIS. Avoiding speculation about perceived benefits and costs is consistent with the approach DOE took in the Yucca Mountain FEIS that cited a consensus among social scientists that a quantitative assessment of the potential impacts from risk perceptions was "impossible at this time and probably unlikely even after extensive additional research" (DOE/EIS-250, Appendix N, page 21). The speculative nature of perceived benefits and costs is recognized in GEIS Section 8.6, p. 8-12, lines 5-10 that first recognizes that perceptions vary among stakeholders, and then cites the same speculative benefits contained in Table 7-6. The tabular information in Table 7-6 and the wording in Section 8.6 regarding perceived benefits and costs should be deleted from the GEIS.

16. GEIS Section B.2.1, p. B-3, lines 30-36 states, "The NRC's review did not identify any issues that would challenge the feasibility of geological disposal." This is based on the analysis contained in Technical Evaluation Reports issued by NRC regarding Yucca Mountain Repository in the areas of safety before and after permanent closure. It should be noted that NRC is now under a writ of mandamus to restart the Yucca Mountain licensing process and NRC announced it will complete the Yucca Mountain Safety Evaluation Report. This GEIS should make a stronger statement about the safety of geologic disposal based on its Yucca Mountain review and if the Yucca Mountain Safety Evaluation Report is available at the time of this Final GEIS, it should be referenced instead of the Technical Evaluation Reports.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Darrell Lacy Jr.", written in a cursive style.

L. Darrell Lacy Jr.
Director, Nye County NWRPO