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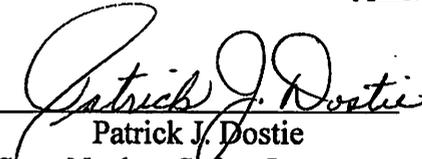
December 14, 2009

To: Honorable Ms. Elizabeth Mitchell, President of the Senate  
Honorable Ms. Hannah Pingree, Speaker of the House

Subject: State Nuclear Safety Inspector Office's November 2009 Monthly Report to the Maine Legislature

New legislation was enacted in the second regular session of the 123<sup>rd</sup> and signed by Governor John Baldacci requiring that the State Nuclear Safety Inspector prepare a monthly report on the oversight activities performed at the Maine Yankee Independent Spent Fuel Storage Installation facility located in Wiscasset, Maine.

Enclosed please find the Inspector's November 2009 monthly activities report. Should you have questions about its content, please feel free to contact me at 207-287-6721, or e-mail me at [pat.dostie@maine.gov](mailto:pat.dostie@maine.gov).

  
Patrick J. Dostie  
State Nuclear Safety Inspector

Enclosure

cc:

Mr. E. William Brach, U.S. Nuclear Regulatory Commission  
Ms. Nancy McNamara, U.S. Nuclear Regulatory Commission, Region I  
Mr. James Connell, Site Vice President, Maine Yankee  
Ms. Brenda Harvey, Commissioner, Department of Health and Human Services  
Mr. Geoff Green, Deputy Commissioner, Department of Health and Human Services  
Ms. Lucky Hollander, Director of Legislative Relations, Department of Health and Human Services  
Dr. Dora Mills, Director, Maine Center for Disease Control and Prevention  
Mr. Patrick Ende, Senior Policy Advisor, Governor's Office  
Mr. David Littell, Commissioner, Department of Environmental Protection  
Mr. Richard Davies, Maine Public Advocate  
Lt. William Snedeker, Special Services Unit, Maine State Police  
Ms. Nancy Beardsley, Director, Division of Environmental Health  
Mr. Jay Hyland, PE, Manager, Radiation Control Program

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# State Nuclear Safety Inspector Office

## November 2009 Monthly Report to the Legislature

### Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 123<sup>rd</sup> Legislature, the foregoing is the monthly report from the State Nuclear Safety Inspector under this new legislation.

The State Inspector's individual activities for the past month are highlighted under certain broad categories, as illustrated below. Since some activities are periodic and on-going, there may be some months when very little will be reported under that category. It is recommended for reviewers to examine previous reports to ensure connectivity with the information presented as it would be cumbersome to continuously repeat prior information in every report.

Since the footnotes are expanded definitions of some scientific terms, for simplicity they were placed in a glossary at the end of the report. In addition, to better understand some of the content of the topics, some effort was placed in providing some historical information. However, for the time being this historical context will be provided as an addendum to the report.

### Independent Spent Fuel Storage Installation (ISFSI)

During November the general status of the ISFSI was normal. There were two instances of spurious alarms due to environmental conditions. All alarms were investigated and no further actions were warranted.

There were no fire or security related impairments in November. There were 18 security events logged. Each was associated with transient camera issues due to temporary environmental conditions.

There were two condition reports (CRs)<sup>1</sup> for the month of November. The first CR was written on November 16<sup>th</sup> and was related to a security issue. The State Nuclear Safety Inspector (SNSI) inadvertently received some non-safeguard e-mail information from the ISFSI'S security. The e-mail information was deleted and the Site Vice-President was notified of the State's action. The second CR was written on November 26<sup>th</sup> due to problems with the computer server. The central processor for the computer was rebooted and returned to service the next day.

### Environmental

In addition to its periodic air sampling at the old Bailey Farm House, on November 9<sup>th</sup> the State received the results from the third quarter field replacement of its thermoluminescent dosimeters (TLDs)<sup>2</sup> of the ISFSI and Bailey Cove. The results from the quarterly change out illustrated an unusual situation this quarter in that there appears to be three distinct exposure levels: elevated, slightly elevated and normal. The two consistent high stations, G and K, averaged 35 milliRoentgens<sup>3</sup> (mR) due to their proximity to the storage casks. The moderately high group stations, C, E, F, J, and L, averaged 32 mR. Stations E and F are close to the storage casks, while stations J and L have exhibited slightly higher readings in the past. However, the reason for station C to be slightly

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<sup>1</sup> Refer to page 5 in the Glossary.

<sup>2</sup> Refer to page 6 in the Glossary.

<sup>3</sup> Refer to page 6 in the Glossary.

elevated is not well understood as it is further away than the other four stations in this exposure set. Station C should trend with its counterparts, stations A, B, and D, since they are somewhat northerly and at comparable distances to the ISFSI. The remaining stations, A, B, D, H, I, and M, averaged 29 mR. The control TLDs that are stored at the State's Radiation Control Program in Augusta averaged about 36 mR. In comparison the normal expected quarterly background radiation levels on the coast of Maine would range from 13 to 25 mR.

The Bailey Cove TLDs averaged 27 mR and ranged from 22 to 32 mR, which is comparable to the normally expected background radiation levels. As observed with the ISFSI TLDs, the Bailey Cove TLDs also had higher values with the lower values due to their proximity to the water's edge.

The reason for the increased radiation values for all the TLDs was due to summer conditions. Since there is a seasonal variation to the ambient radiation environment that follows the out gassing of the Radon gas from the soils, it is normal for the values to increase during the summer months. In addition, there is a known transient phenomenon of Radon out gassing that also occurs with advancing weather fronts. Since last summer was a rainy one, this extra exposure would add to the seasonal affect and would explain why all the TLD stations were affected similarly. As it is difficult to illustrate seasonal trends with only three data points, the data will be plotted when additional surveillance results become available.

For informational purposes Figure 1 at the end of the report illustrates the locations of the State's 13 TLD locations in the vicinity of the ISFSI. The State's locations are identified by letters with the two highest locations being stations G and K.

### Maine Yankee Decommissioning

At present, there are eleven confirmatory reports that are essentially complete. Due to the extensive delays in ongoing commitments and emerging issues, the confirmatory summary report is now expected to be partially drafted in December and finalized in January.

### Groundwater Monitoring Program

On November 9<sup>th</sup> Maine Yankee submitted its fourth Annual Radiological Groundwater Report to the Department of Environmental Protection (DEP) on the monitoring of its former, decommissioned industrial site. The report covers the period from September 2008 to June 2009. On November 18<sup>th</sup> the State Nuclear Safety Inspector (SNSI) notified Maine Yankee that numerous portions of the radiological monitoring data was missing from its submittal. On November 23<sup>rd</sup> Maine Yankee revised the CD supporting their Annual Radiological Groundwater Report and forwarded the revised information to the DEP. On November 30<sup>th</sup> the SNSI provided his comments on Maine Yankee's data usability review of Maine Yankee's June 2009 groundwater results submitted to the SNSI in September.

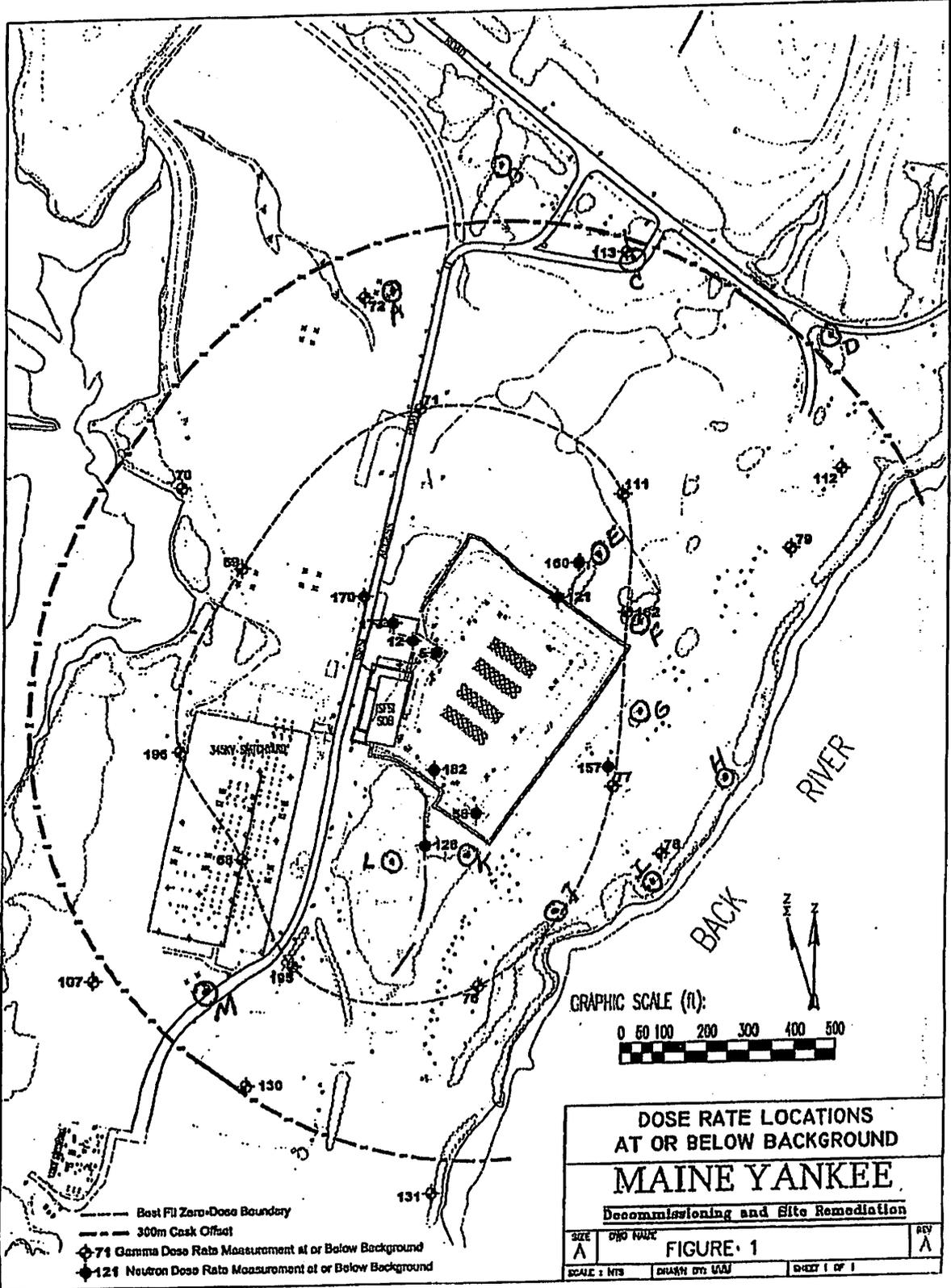
### Other Newsworthy Items

1. On November 4<sup>th</sup> the Government Accountability Office issued GAO 10-48 Report, entitled "NUCLEAR WASTE MANAGEMENT - Key Attributes, Challenges, and Costs for the Yucca Mountain Repository and Two Potential Alternatives". The Report was issued in response to three Congressional requesters, Senator Majority Leader Harry Reid, Senator John Ensign, both from Nevada, and Senator Barbara Boxer from California. The GAO cost projections found a) "that a repository to dispose of 153,000 metric tons (of nuclear waste) would cost \$41 billion to \$67 billion (in 2009 dollars) over a 143 year period until the repository is closed." Nuclear power electric rate payers would pay about 80% of these costs and taxpayers would pay about 20%. b) "GAO estimated (in 2009 dollars) the cost of centralized storage of 153,000

metric tons at the end of 100 years to range from \$15 billion to \$29 billion but increasing to between \$23 billion and \$81 billion (with disposal in a permanent geological repository after 100 years)." The GAO assumed that two locations for centralized storage could be realized within 10 to 30 years. c) "GAO estimated the cost of on-site storage (in 2009 dollars) of 153,000 metric tons at the end of 100 years to range from \$13 billion to \$34 billion but increasing to between \$20 billion to \$97 billion (with disposal in a permanent repository after 100 years)." Options 'b' and 'c' cover a period of 232 years. The GAO Report also assessed on-site storage costs for 500 years with repackaging every 100 years for safety purposes from \$34 billion up to \$225 billion. The GAO Report acknowledged large uncertainties in their cost projections.

2. On November 9<sup>th</sup> the Energy Daily reported on the first rumored potential candidates for the Department of Energy's Blue Ribbon Commission being established to identify the nation's nuclear waste disposal alternatives to the Yucca Mountain Project. They include former National Security Advisor Brent Scowcroft, former Representative Lee Hamilton from Indiana, former Nuclear Regulatory Commission Chairman and current President of Rensselaer Polytechnic Institute Shirley Jackson, and University of California Astrophysics Professor George Smoot.
3. On November 13<sup>th</sup> the Nuclear Energy Institute (NEI) transmitted a letter to the Chairman of the Nuclear Regulatory Commission (NRC) requesting they consider allocating their resources to the technical review of the Department of Energy's (DOE) license application and temporarily suspend the adjudicatory proceedings on the intervenors' contentions to the DOE Yucca Mountain license application. The letter was prompted by an internal DOE memorandum indicating that "all license defense activities will be terminated in December 2009". The NEI considers the DOE memorandum as a prelude to DOE's withdrawal of their license application before the NRC. A copy of the two page NEI letter is attached at the end of the report and does not include the extra eight pages that catalog the mailing addresses of those on the NRC's Yucca Mountain Licensing Proceeding Service List.
4. On November 16<sup>th</sup> the State of Nevada forwarded their response to the Nuclear Energy Institute's November 13<sup>th</sup> letter to the Nuclear Regulatory Commission. The Nevada letter expresses their concern of a denial of due process of law and itemizes the deficiencies associated with the NEI letter. A copy of the two page Nevada letter is attached at the end of the report, which does not include the extra seven pages that list the mailing addresses of those on the NRC's Yucca Mountain Licensing Proceeding Service List.
5. On November 18<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) held a conference call to discuss further the outcome of the Appropriations Act of FY 2010 that passed on October 1<sup>st</sup> and its impact on the Department of Energy's (DOE) Nuclear Waste Disposal Program. There was some discussion on the composition of the Blue Ribbon Commission that is being formulated by Energy Secretary Chu. However, most of the discussion centered on what types of responses the members could take, either singly or collectively, in light of the recent DOE internal memorandum stating that their licensing efforts for the Yucca Mountain Project will terminate in December 2009.
6. On November 18<sup>th</sup> Ranking Members of the House of Representatives forwarded a letter to Energy Secretary Chu expressing their reservations relevant to the recent DOE's draft Program Decision Memorandum (PDM) of October 23<sup>rd</sup> statement that "all license activities will be terminated in December 2009". The statement means that the DOE would stop responding to Nuclear Regulatory Commission (NRC) inquiries on the technical aspects of DOE's Yucca Mountain license application, essentially ensuring that the NRC would not approve it. The October 23<sup>rd</sup> PDM also summarizes DOE's FY 2011 funding request at \$46.2 million and zero funding for fiscal years thereafter. The FY 2011 funding breakdown is for \$21.2 million for site remediation and worker transition, and \$25 million for archiving the Yucca Mountain program data, fundamentally shutting down the Yucca Mountain Project. The House letter lists a number of questions and requests for the DOE to respond to. Copies of the House letter and the DOE PDM are attached at the end of the report.

7. On November 18<sup>th</sup> the Sustainable Fuel Cycle Task Force Science Panel sent a letter to Secretary of Energy Chu questioning the technical merits of the DOE response to the Task Force's October 7<sup>th</sup> letter. The letter takes issue with the DOE comment that Yucca Mountain is not a workable option. A copy of the Task Force letter is attached at the end of the report. The October 7<sup>th</sup> Task Force letter, signed by the Task Force and 18 other organizations, can be found in the State Nuclear Safety Inspector's October report.
8. On November 19<sup>th</sup> the NWSC sent a letter to the Chairmen of both the Senate and House Appropriations Committees and their respective Ranking Members expressing their concern over an October 23<sup>rd</sup> DOE memorandum from the DOE's Chief Financial Officer's directing that "all license defense activities will be terminated in December 2009". The NWSC letter, a copy of which is attached, raises questions as to the intent of the recently passed Appropriations Act for FY 2010, which clearly supported the continuation of the DOE Yucca Mountain license application before the Nuclear Regulatory Commission for the entire fiscal year 2010. The NWSC is an ad hoc group of state utility regulators, state attorney generals, electric utilities, and associate members representing 46 member organizations in 26 states.



# Glossary

**Condition Report (CR):** A report that promptly alerts management to potential conditions that may be adverse to quality or safety. The report is generally initiated by a worker at the ISFSI facility. The report prompts management to activate a process to identify causal factors and document corrective and preventative measures stemming from the initial report.

**Decay Series:** There are three naturally occurring decay series of heavy elements that transform into a series of various radioactive elements by releasing energy in the form of particles, (such as alpha or beta), and/or gamma rays to end in a stable form of non-radioactive Lead. All three decay series start with extremely long lived radioactive, heavy elements that can be measured in geologic time units. They are Uranium-238 with an approximate half-life of 4.5 billion years, Uranium -235 with a half-life of about 700 million years, and Thorium-232 with a half-life of 14 billion years. All three series contain some more well-known radioactive species, Radium and Radon.

**Dose** is the amount of radiation that is absorbed by a person's body. In the radiation field the term dose is sometimes used interchangeably with dose equivalent, which is defined as the rem and described below.

**fCi/m<sup>3</sup>** is an acronym for a femto-curie per cubic meter, which is a concentration unit that defines how much radioactivity is present in a particular air volume, such as a cubic meter. A curie, named after its discoverers Pierre and Marie Curie, is defined as the rate at which a radioactive element transforms itself into another element that is most often another radioactive element. It is mathematically equivalent to 37 billion disintegrations or transformations per second. A "femto" is a scientific prefix for an exponential term that is equivalent to one quadrillionth (1/1,000,000,000,000,000).

**Half-life** is a measure of how fast half the mass of a radioactive element will transform itself into another element. Each radioactive element has its own unique rate of transformation. Consequently, if a radioactive element, such as Iodine-131 has a half-life of 8 days, then in 8 days half of the original amount of Iodine-131 will be gone; in another 8 days half of that half will be left and so on.

**Gamma Spectroscopy** is a scientific method used to analyze gamma rays emanating from radioactive elements. The analytical system determines the gamma ray energy which acts as a "fingerprint" for specific radioactive materials. For example, Potassium-40 (K-40) has a very, distinctive gamma energy at 1460 keV. This uniqueness allows the instrument to positively identify the K-40 1460 energy as its own unique fingerprint. A keV is an abbreviation for kilo electron volt, which is a measure of energy at the atomic level. A kilo is a scientific prefix for the multiplier 1,000.

**Gross Beta** is a simple screening technique employed to measure the total number of beta particles emanating from a potentially radioactive sample, with higher values usually indicating that the sample contains natural and/or man-made radioactive elements. High values would prompt further analyses to identify the radioactive species. A beta is a negatively charged particle that is emitted from the nucleus of an atom with a mass equal to that of an orbiting electron.

**Liquid Scintillation** is an analytical technique by which Tritium and many other radioactive contaminants in water are measured. A sample is placed in a special glass vial that already contains a special scintillation cocktail. The vial is sealed and the container vigorously shaken to create a homogeneous mix. When the tritium transforms or decays it emits a very low energy beta particle. The beta interacts with the scintillating medium and produces a light pulse that is counted by the instrument. Although a different scintillation cocktail is used, this is basically how radon in well water is measured.

**mrem or millirem** is one thousandth (1/1000) of a rem. The rem is defined below.

**milliRoentgen (mR)** is one thousandth (1/1000) of a Roentgen, which is defined below.

**pCi/kg** is an acronym for a pico-curie per kilogram, which is a concentration unit that defines how much radioactivity is present in a unit mass, such as a kilogram. A "pico" is a scientific prefix for an exponential term that is equivalent to one trillionth (1/1,000,000,000,000).

**pCi/L** is an acronym for a pico-curie per liter, which is a concentration unit that defines how much radioactivity is present in a unit volume, such as a liter.

**Rem** is an acronym for roentgen equivalent man. It is a conventional unit of dose equivalent that is based on how much of the radiation energy is absorbed by the body multiplied by a quality factor, which is a measure of the relative hazard of energy transfer by different particles, (alpha, beta, neutrons, protons, etc.), gamma rays or x-rays. In comparison the average natural background radiation dose equivalent to the United States population is estimated to be 292 millirems per year, or 0.8 millirem per day, with 68 % of that dose coming from radon. A millirem is one thousandth, (1/1000), of a rem.

**Roentgen** is a special unit of exposure named after the discoverer of X-Rays, Wilhelm Roentgen. It is a measure of how much ionization is produced in the air when it is bombarded with X-Rays or Gamma Rays. Ionization is the removal of an orbital electron from an atom.

**Skyshine** is radiation from a radioactive source that bounces off air molecules in the sky, much like a cue ball does off the banking of a billiard table, and is scattered/redirected back down to the earth.

**Thermoluminescent Dosimeters (TLD)** are very small plastic-like phosphors or crystals that are placed in a small plastic cage and mounted on trees, posts, etc. to absorb any radiation that impinges on the material. Special readers are then used to heat the plastic to release the energy that was stored when the radiation was absorbed by the plastic. The energy released is in the form of invisible light and that light is counted by the TLD reader. The intensity of the light emitted from the crystals is directly proportional to the amount of radiation that the TLD phosphor was exposed to.

**Tritium (Hydrogen-3 or H-3)** is a special name given to the radioactive form of Hydrogen usually found in nature. All radioactive elements are represented as a combination of their chemical symbol and their mass number. Therefore, Tritium, which is a heavy form of the Hydrogen molecule with one proton and two neutrons in the nucleus of its atom, is abbreviated and represented by its chemical symbol, H, for Hydrogen and 3 for the number of particles in its nucleus, or mass number. Similarly, other radioactive elements, such as Potassium-40, can be represented and abbreviated as K-40, and so on.

# Addendum

## Historical Perspectives

### Independent Spent Fuel Storage Installation (ISFSI)

In 1998 the Department of Energy (DOE) was required to take title and possession of the nation's spent nuclear fuel as mandated by the Nuclear Waste Policy Act (NWPA) of 1982. When the NWPA was enacted, Congress assumed that a national repository would be available for the disposal of the spent fuel. Since the licensing and construction of the high level waste repository at Yucca Mountain in Nevada had experienced significant delays, DOE is currently projecting that the Yucca Mountain site will not be available until at least the year 2020 or later.

DOE's inaction prompted Maine Yankee to construct an ISFSI during decommissioning to store the more than 1434 spent fuel assemblies that were previously housed in the spent fuel pool in the plant, into 60 storage casks on-site. Another four casks contain some of the more radioactive components of the reactor internals that were cut up during decommissioning, since their radioactive concentrations were too high to dispose at a low level radioactive waste facility. These are expected to be shipped along with the spent fuel to the Yucca site should the repository open. Since then the Obama Administration and Energy Secretary Chu have advocated that the Yucca Mountain site is no longer a viable option for disposing of the nation's high level waste and spent nuclear fuel and plan to assemble a Blue Ribbon Panel of experts to review alternative strategies for managing these waste forms.

### Environmental

Since 1970 the State has maintained an independent, radiological environmental monitoring program of the environs around Maine Yankee. Over the years there was an extensive quarterly sampling and analysis program that included such media as salt and fresh water, milk, crabs, lobsters, fish, fruits, vegetables, and air. Since the decommissioning the State's program has been reduced twice to accommodate decreased revenues for sample analyses at the State's Health and Environmental Testing Laboratory (HETL). Presently, the State monitors one freshwater location, one saltwater and seaweed location, and one air sample location. The State maintains a quarterly sampling regimen, except for the air sample, which is performed bi-weekly near the old Bailey Farm House. Besides the media sampling, over the years the State has maintained a robust thermoluminescent dosimeter (TLD) program to measure the radiation environment. The TLDs were placed within a 10 to 20 mile radius of the plant to measure the background radiation levels and later, when the plant was operating, any potential increases in background levels due to plant operations. Over time the number of TLDs nearly doubled to address public concerns over the clam flats in Bailey Cove and the construction of the ISFSI. After the plant's decommissioning the State reduced the number of TLDs around Bailey Cove, but maintained the same number for the environmental surveillance of the ISFSI. A further evaluation of reducing the State's radiological environmental monitoring program is planned for the fall of 2009.

### Maine Yankee Decommissioning

Maine Yankee's decommissioning was completed in the fall of 2005. At that time the State Nuclear Safety Inspector (SNSI) also commenced his final walk down survey of the site. Certain areas such as the transportation routes exiting the plant site were surveyed after the plant industrial area was decommissioned. Due to the length of the egress routes, it took a considerable amount of time to complete both half-mile east and west access routes and the two thirds of a mile of the railroad track. In addition, seven specific areas, including the dirt road, were also examined as part of the final site survey. The State's final survey of the dirt road leading to the old softball field

was extended in the fall of 2007 when the State discovered three localized elevated areas on the road that were contaminated. At that time, extensive bounding samples were taken to determine the extent of the contamination.

Because of the State's findings the original Class III designation of little or no potential for small areas of elevated activity was deemed incorrect. Therefore, the Dirt Road systematic sampling was necessary to ensure that all the State's findings would still pass Maine Yankee's License Termination Plan (LTP) Class I criteria. The State and Maine Yankee findings both indicated that the random concentration of the Cesium-137 was low and comparable to what is normally found in nature from past weapons testing during the 1950's and 1960's. On October 31<sup>st</sup> the State issued a letter to Maine Yankee stating that, based on the recent systematic sampling and bounding efforts on the elevated areas, the results demonstrated that Maine Yankee had met its Class I LTP criteria. Therefore, the State concluded that there were no further outstanding issues relative to the Dirt Road and considered the issue closed. Even though some residual radioactivity remains, due to the localized nature of the contaminant and the restricted security access to the site, the contamination found does not present a public health hazard.

With the closure of the Dirt Road, the only remaining walk down survey left to be performed on-site is the portion of the East Access Road adjacent to the ISFSI bermed area. This area remains as the background radiation levels from the ISFSI were initially too high to survey, (greater than 30,000 counts per minute), and could mask potential elevated areas. Since then the State has been monitoring the levels every spring and has observed a steady decrease in the ambient radiation levels down to 25,000 counts per minute (cpm). When the levels reach about 20,000 cpm the area will be surveyed to close out all transportation routes at the Maine Yankee site.

The State will publish its decommissioning findings in a confirmatory summary that is expected in October of 2009. As part of that process the State will condense over 40 major survey areas into eleven confirmatory reports that are being worked on by an outside consultant. The independent consultant has been collecting all the State's findings and summarizing them in confirmatory reports that the State Nuclear Safety Inspector will use to complete the State's confirmatory summary.

### Groundwater Monitoring Program

In June of 2004, the State, through the Department of Environmental Protection's (DEP) authority under 38 MRSA §1455, signed an agreement with Maine Yankee for a five year, post decommissioning radiological groundwater monitoring program at the site. Presently, the program is in its fourth year. The details of how the agreement would be carried out relative to the quality assurance facets of the monitoring, sampling and analyses would be captured in Maine Yankee's Radiological Groundwater Monitoring Work Plan.

The normal sampling regimen for the groundwater monitoring program is March, June and September of each year. However, since the first sampling took place in September of 2005, the annual sampling constitutes the September sampling of the current calendar year and finishes with the June sampling of the following year.

It should be noted that the Agreement between the State and Maine Yankee set an administrative limit of 2 mrems per year per well as a demonstration that it has met the State's groundwater decommissioning standards of a 4 mrem dose per year above background values. If a well exceeds the 2 mrem value after the five year monitoring program ends, Maine Yankee would allow the State to continue monitoring that well. To-date fifteen of the sixteen wells sampled have not exceeded one tenth of the limit, or 0.2 mrems/yr. Only well number MW-502 has come close to exceeding the 2 mrems administrative limit and that was back in March of 2006 when the dose was 1.96 mrems. Since then the Tritium in this well has been steadily decreasing. It is expected that this well will remain elevated for some time as the water infiltration rates are very low. Consequently, the decrease will be slow and steady.



NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel  
PRESIDENT AND CHIEF EXECUTIVE OFFICER

November 13, 2009

BY ELECTRONIC MAIL

The Honorable Gregory B. Jaczko  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: Yucca Mountain Licensing Application Review

Dear Chairman Jaczko:

On behalf of the commercial nuclear industry, I am writing to request that the Nuclear Regulatory Commission limit the expenditure of resources on the Department of Energy's ("DOE") application seeking construction authorization for a high-level radioactive waste disposal repository at Yucca Mountain. While we support continuation of the licensing process, as discussed herein we believe there is a compelling basis for the Commission to focus agency resources solely on the technical review of DOE's applications rather than conducting adjudicatory proceedings in parallel.

As you know, the Department of Energy filed the Yucca Mountain license application in June 2008, and it is now undergoing review by the NRC Staff. Licensing proceedings are also underway. In this regard, legal issues raised by contentions are being briefed, and discovery has begun. Briefing should be complete next year; discovery – including the taking of numerous depositions – is scheduled to continue throughout most of 2010. If the adjudicatory proceedings continue as currently planned, hearings would likely begin sometime during the first part of 2011. However, because circumstances related to DOE's pursuit of the Yucca Mountain application are expected to change significantly in the very near term, the Commission should take immediate action to conserve and more immediately target its and stakeholders' resources now being expended on the licensing proceeding.

Specifically, on October 28, 2009, President Obama signed into law H.R. 3183, the "Energy and Water Development and Related Agencies Appropriations Act, 2010." That Act, which provides FY 2010 appropriations for the Department of Energy and other agencies, established the total

U.S. Nuclear Regulatory Commission  
November 13, 2009  
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funding for NRC review of DOE's repository application at \$29 million. This amount is significantly below the \$56 million NRC requested for this purpose.

As reported in Energy Daily on November 9, 2009, DOE's FY 2011 budget request apparently states "All license defense activities will be terminated in December 2009." In view of the foregoing, the Nuclear Energy Institute respectfully requests that the Commission constrain the NRC's Yucca Mountain licensing efforts to performing technical reviews (i.e., necessary to support issuance of the Safety Evaluation Report and environmental analyses) for the remainder of this fiscal year. As such, the Commission should direct that activities related to the adjudicatory proceeding (at least temporarily) be suspended. This will avoid unnecessarily consuming stakeholder resources in the face of DOE's potential withdrawal of its license application. Further, by focusing resources exclusively on its technical review, the Commission will most efficiently serve the goal of learning as much as possible regarding radioactive waste disposal from the Yucca Mountain review process while it is ongoing. Finally, this approach may help to better define the issues to be considered in any future adjudicatory proceedings.

I would be happy to discuss this matter at your earliest convenience.

Sincerely,



Marvin S. Fertel

cc: Commissioner Dale E. Klein  
Commissioner Kristine L. Svinicki  
Mr. R. William Borchardt  
Yucca Mountain Licensing Proceeding Service List

# EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC

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November 16, 2009

**Via Electronic Mail Only**

The Honorable Gregory B. Jaczko  
Chairman, U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Chairman Jaczko:

Late Friday afternoon, November 13, 2009, the Nuclear Energy Institute (NEI), one of the intervening parties to the highly contested adjudicatory proceeding on the U.S. Department of Energy's (DOE's) license application for a construction authorization for the proposed Yucca Mountain high-level waste repository, wrote to you and the other Commissioners requesting that the adjudicatory proceeding required for DOE's application be suspended. NEI's request, which would deny other intervening parties to this first-of-a-kind proceeding their right under Section 114(d) of the Nuclear Waste Policy Act, Section 189 of the Atomic Energy Act, and 10 C.F.R. § 2.310(f) to a full, fair, and timely on-the-record hearing, is a thinly disguised motion since it seeks to abrogate the entire regulatory scheme for the licensing proceeding. As such, it suffers from numerous defects that should preclude the Commission from giving it any consideration. Among other things, NEI's request:

- was filed before the wrong tribunal, which is the presiding Construction Authorization Board (CAB);
- was filed without certification of prior consultation with the other parties, as required by 10 C.F.R. § 2.323(b) (and in fact, no consultation was conducted);
- relies on gross supposition about DOE's plans (*i.e.*, a partial leak of an alleged DOE draft document), without any supporting affidavit or authoritative information from DOE;
- mischaracterizes NRC Staff resources and includes no supporting affidavit or authoritative information about alleged Staff resources constraints;

# EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC

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November 16, 2009

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- ignores a prior DOE formal representation filed before the CAB, several public statements by DOE Secretary Chu, and recent Congressional funding appropriations language regarding the conduct of the Yucca Mountain licensing proceeding in FY 2010;
- usurps CAB's authority to manage and control the Yucca Mountain licensing proceeding, including its published schedule for activities during FY 2010; and
- pretends to offer an approach to define issues for a future adjudicatory proceeding, again ignoring the regulatory scheme under which the CAB and the Commission have already defined the issues for this hearing after reviewing well over 12,000 pages of filings by the parties.

Indeed, if acted upon, NEI's proposal would be an appalling denial of due process of law and would permit DOE and NRC Staff to proceed to resolve technical issues related to Yucca Mountain without any meaningful participation by any adverse party on any of their admitted safety and environmental contentions (which number in excess of 300). NEI is represented in the proceeding by experienced legal counsel, and therefore, it should know better.

It would be unimaginable that the Commission would decide to ignore its CAB and its rules and give NEI favored treatment by proceeding to consider the merits of NEI's request. Due process and the Commission's rules require that the State of Nevada and the other parties to the Yucca Mountain proceeding be advised whenever a motion has been filed, so that they may prepare and file formal answers in accordance with 10 C.F.R. § 2.323(c).

Sincerely,



Martin G. Malsch, Esq.  
Attorney for the State of Nevada  
Egan, Fitzpatrick, Malsch & Lawrence, PLLC

cc Commissioner Dale E. Klein  
Commissioner Kristine L. Svinicki  
Mr. R. William Borchardt  
Yucca Mountain Licensing Proceeding Service List

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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

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November 18, 2009

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STEVE SCALISE, LOUISIANA

The Honorable Steven Chu  
Secretary  
Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Dear Secretary Chu:

We have in our possession a Department of Energy (DOE) draft Program Decision Memorandum (PDM) that raises troubling questions about your decision-making and current plans concerning the Department's pending license application for authorization to construct and operate a nuclear waste repository at Yucca Mountain, Nevada.

Under current law, Yucca Mountain is the designated site for the nation's first spent nuclear fuel and high-level radioactive waste repository, and that law continues to be the law of the land. The Yucca Mountain license application was submitted by DOE to the Nuclear Regulatory Commission (NRC) in June 2008, after spending billions of dollars in support of more than two decades of scientific, engineering, and risk analyses. During that timeframe, NRC has also expended substantial resources in support of the Yucca Mountain licensing process, including promulgating regulations and technical guidance, hiring personnel, constructing a multi-million dollar hearing facility in Las Vegas, conducting lengthy pre-licensing proceedings and making publicly available millions of documents submitted by DOE and other interested parties on the NRC website.

The DOE application was docketed and accepted for review by NRC in September 2008. Since then, DOE has consistently advised the Congress that the Department plans to participate in the NRC licensing process consistent with its statutory obligations. Just this year, DOE sought and was appropriated funding for FY 2010 to continue with licensing support through September 2010 and otherwise has represented to Congress, as recently as September 30, 2009, that it will "continue participation in the NRC application process" for Yucca Mountain, "consistent with the provisions of the Nuclear Waste Policy Act."

In contrast to these public positions and statements to committees of jurisdiction, your agency's draft Program Decision Memorandum of October 23, 2009, states that "All license defense activities will be terminated in December 2009." Moreover, the memorandum, issued by DOE's Chief Financial Officer (CFO), would cut the relevant budget request for FY2011 in half from existing levels and provide funding only for site remediation, worker transition, and archiving of data associated with the Yucca Mountain Program next year, and then would zero out the budget in following years – all of which indicates agency leadership plans to cease all Yucca Mountain activity and withdraw from the licensing process at NRC. The CFO notes further that information in the draft PDM is not expected to change (see attachment).

This document raises serious questions about your adherence to statutory obligations and responsibilities under the Nuclear Waste Policy Act and about whether you are taking actions that will increase the Department's or taxpayer liabilities and permanently strand billions of dollars in federal funding and investment in the project.

Given the importance of this matter, we seek answers and information relating to your decisions and plans regarding the Yucca Mountain repository and DOE's application before the NRC. In addition, we write to request separate briefings in Committee Minority offices as soon as possible from Steve Isakowitz, Chief Financial Officer, and from Christopher Kouts, Acting Director, Office of Civilian Radioactive Waste Management, concerning agency plans for supporting the Yucca Mountain repository application before the NRC. Please respond to the following questions and requests no later than two weeks from the date of this letter:

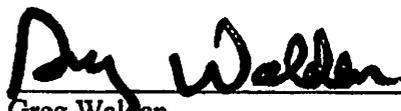
1. What are your plans with regard to DOE's pending license application for authorization to construct and operate the Yucca Mountain repository application, including, but not limited to, your plans for support in FY2011 and beyond?
  - a. Provide all documents relating to plans and decisions concerning support for the Yucca Mountain repository application pending before the NRC.
2. What are your plans concerning site remediation, workforce transition, and archiving of data associated with the Yucca Mountain repository program?
3. To the extent you plan to perform site remediation, workforce transition, and archiving of data associated with Yucca Mountain repository program, (i) when did you initiate this decision-making process, (ii) what DOE offices and entities and other federal agencies participated in this decision-making process, and (iii) how will any such action affect DOE's ability to provide the technical support necessary for the license application pending before the NRC?
  - a. Provide all documents relating to plans concerning site remediation, worker transition, and archiving of data associated with the Yucca Mountain repository program.
4. To the extent you plan to modify or suspend the license application currently pending before the NRC, what is the scientific or technical basis, if any, for this planned action?

- a. Provide all documents relating to technical or scientific basis for modifying or suspending the NRC application.
5. How do plans concerning site remediation, worker transition, and archiving of data associated with the Yucca Mountain program comport with DOE's statutory obligations under the Nuclear Waste Policy Act of 1982, as amended?
  - a. Provide all documents prepared by DOE that address or analyze how such actions would comport with DOE's statutory obligations under the Nuclear Waste Policy Act of 1982, as amended
  - b. Provide all documents that address or analyze the potential impact that failing to pursue the Yucca Mountain repository may have on the construction of new nuclear plants.
6. Provide all documents relating to Congressional requests over the past year for information and documents concerning your policies and plans concerning the Yucca Mountain repository.
7. If DOE withholds any documents or information in response to this letter, please provide a Vaughan Index or log of the withheld items. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Should you have any questions, please have your staff contact Mr. Peter Spencer of the Minority Committee Staff of the Energy and Commerce Committee at (202) 225-3641.

Sincerely,

  
\_\_\_\_\_  
Joe Barton  
Ranking Member

  
\_\_\_\_\_  
Greg Walden  
Ranking Member  
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Henry A. Waxman, Chairman  
Committee on Energy and Commerce

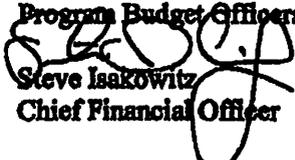
The Honorable Bart Stupak, Chairman  
Subcommittee on Oversight and Investigations



**Department of Energy**  
Washington, DC 20585

October 23, 2009

**MEMORANDUM FOR DISTRIBUTION**

**To:** Program Budget Officers  
**From:**   
Steve Isakowitz  
Chief Financial Officer  
**Subject:** Second round of Program Decision Memoranda

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The Department has recently submitted a revised FY 2011 budget request to the Office of Management and Budget. The attached draft Program Decision memoranda (PDMs) codify the decisions made and the information that should be communicated consistently to OMB.

These PDMs are draft, until signed by the Deputy Secretary. Final PDMs will be distributed as soon as possible. We do not expect the information to change.

Attachment



**Office of Civilian Radioactive Waste Management  
FY 2011-FY 2015 Strategic Resources Review  
Program Decision Memorandum**

(Dollars in Thousands)

**Detailed Programmatic Guidance on Funding Decisions**

The FY 2011-FY 2015 Office of Management and Budget (OMB) submission for the Office of Civilian Radioactive Waste Management is summarized below.

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-15
<i>Civilian Radioactive Waste Management</i>						
<b>Nuclear Waste Disposal</b>						
Program Direction.....	21,200	--	--	--	--	21,200
<i>Decrement</i>						
AULG/Earmarks.....	--	--	--	--	--	--
Blue Ribbon Commission.....	--	--	--	--	--	--
Subtotal, Nuclear Waste Disposal.....	21,200	--	--	--	--	21,200
<b>Defense Nuclear Waste Disposal</b>						
Repository Program.....	25,000	--	--	--	--	25,000
<i>Decrement</i>						
Subtotal, Defense Nuclear Waste Disposal.....	25,000	--	--	--	--	25,000
<b>Civilian Radioactive Waste Management.....</b>	<b>46,200</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>46,200</b>

**Decrement**

N/A

**Target**

The target funding amount for FY11 is \$46,200, of which \$21,200 shall support site remediation and worker transition and \$25,000 shall support the archiving of data associated with the Yucca Mountain program. All license defense activities will be terminated in December 2009.

**Budget Structure Changes**

The following Budget Structure Changes apply to the Office of Civilian Radioactive Waste Management.

FY 2010 Structure	FY 2011 Approved Structure
Nuclear Waste Disposal	Nuclear Waste Disposal
Yucca Mountain Repository Project	Yucca Mountain Repository Project
Transportation	Transportation
Program Management & Integration	Management of SNF and Radioactive
Program Direction	Waste Alternatives
Congressional Directed Projects	Program Management & Integration
	Program Direction
	Congressional Directed Projects



# **Sustainable Fuel Cycle**

## **TASK FORCE**

www.sustainablefuelcycle.com

### **Sustainable Fuel Cycle Task Force Science Panel**

November 18, 2009

The Honorable Steven Chu  
Secretary  
United States Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Secretary Chu:

We are writing to you to express concerns, which are shared by a number of our technical colleagues, about the way that the science supporting Yucca Mountain has been characterized. In particular we are concerned with the response from Acting OCRWM Director Mr. Kouts to our October 7th letter to you which states "the Administration does not view Yucca Mountain as a workable option".

We are not aware of any scientific basis for the Yucca Mountain site to be judged unworkable. This view is shared by the Sustainable Fuel Cycle Science Panel, whom we represent, and whose members (see attached biographies) have many decades of senior scientific experience. In support of our position, we note that such august groups as the Nuclear Waste Technical Review Board, specially empanelled national and international peer reviews, the US Geological Survey, and all of the DOE National Laboratories have never stated any scientific bases for the site being unworkable; nor have they ever recommended curtailing the licensing process.

From a regulatory perspective, the NRC technical safety review of the Yucca Mountain license application has been going forward with no new scientific issues being raised. The DOE OCRWM team has successfully responded to over 500 NRC staff Requests for Additional Information. Even with much reduced resources, scientific safety issues seem to be well on their way to being resolved in a comprehensive, open and transparent public manner. There is no scientific reason to curtail this licensing process and it should continue as the President delineated in the FY 2010 budget request and as you have proposed in your Congressional testimony of June 2009.

We believe that continuation of the licensing process is consistent and supportive of your plans for a Blue Ribbon Commission to explore alternatives. Regardless of future technology development, there is no known permanent workable disposal alternative other than in a geologic disposal site. Such a site would likely have to be licensed under comprehensive EPA/ NRC regulatory processes that could extend out to one million years. No one has ever licensed anything under such comprehensive requirements. Much can be learned from continuing the licensing process even if the Yucca site is never built.



# Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

The Honorable Steven Chu  
Secretary of Energy  
November 18, 2009  
Page 2

We soundly support President Obama's March 9<sup>th</sup>, 2009 Memorandum on Scientific Integrity and are perplexed as to the basis for Mr. Kouts' "unworkable" statement and rumors that licensing activities may be discontinued. We support your plans to explore new alternative approaches, but until another disposal site is designated under law, we believe that our nation should continue and learn from the NRC Yucca Mountain licensing process. We believe also that passing this problem on to our grandchildren without a disposal solution is unacceptable from an intergenerational responsibility perspective.

Yours sincerely,

Handwritten signature of Charles Fairhurst in cursive script.

Charles Fairhurst, Ph.D.

Handwritten signature of D. Warner North in cursive script.

D. Warner North Ph.D.

Handwritten signature of Eugene H. Roseboom Jr. in cursive script.

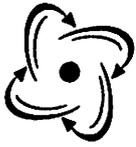
Eugene H. Roseboom Jr., Ph.D.

Handwritten signature of Wendell Weart in cursive script.

Wendell Weart, Ph.D.

For the  
Sustainable Fuel Cycle Task Force Science Panel

Cc: Dr John Holdren, Ph.D.  
Director OSTP



# Sustainable Fuel Cycle TASK FORCE

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The Honorable Steven Chu  
Secretary of Energy  
November 18, 2009  
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## Science Panel Biographies

### **Dr. Ronald Ballinger, Ph.D.**

Dr. Ronald G. Ballinger is a Massachusetts of Technology (MIT) Professor of Nuclear Science and Engineering and Materials Science and Engineering and is also the Head of the H.H. Uhlig Corrosion Laboratory at MIT. He is an expert in the corrosion of metals and serves on various expert national and international groups on materials behavior under challenging environments. He served for 8 years in the nuclear navy (submarines) before attending college. Professor Ballinger has authored or co-authored more than 100 scientific publications and consults for the US Nuclear Regulatory Commission, US Department of Energy, and industry in the areas of environmental degradation of materials and failure root cause and analysis.

### **Dr. Charles Fairhurst, Ph.D.**

Dr. Fairhurst, Professor Emeritus of the University of Minnesota, has more than 50 years of experience in mining rock mechanics and has consulted on rock stability problems for tunnels, dams, mines and excavations throughout the world. He served as President of the International Society of Rock Mechanics from 1991 through 1995, and on numerous International and US National Academies of Science Panels, including the Board of Radioactive Waste Management; reviewer and advisor to government agencies on nuclear waste disposal. He has also served on the US Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste as well as review/advisory committees in France, Sweden, Russia, China and the IAEA. (Vienna).

He has been elected to the U.S. National Academy of Engineering and the Royal Swedish Academy of Engineering Sciences. Dr. Fairhurst has received honorary doctorate degrees from the University of Nancy, France; St. Petersburg Mining Academy, Russia; University of Sheffield, England; and University of Minnesota, USA, and is Advisory Professor to Tongji University, Shanghai, China.

### **Dr. Warner North, Ph.D.**

D. Warner North is president and principal scientist of NorthWorks, Inc., a consulting firm in Belmont, California, and consulting professor in the Department of Management Science and Engineering at Stanford University. Over the past forty years Dr. North has carried out applications of decision analysis and risk analysis for numerous governments and private concerns regarding energy and environmental protection.



# Sustainable Fuel Cycle

## TASK FORCE

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The Honorable Steven Chu  
Secretary of Energy  
November 18, 2009  
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### **Dr. Warner North, Ph.D. – Continued**

Dr. North has served as a member and consultant to the Science Advisory Board of the US Environmental Protection Agency since 1978, and as a Presidentially appointed member of the US Nuclear Waste Technical Review Board (1989-1994). Dr. North is a co-author of many reports dealing with environmental risk for the National Research Council of the National Academy of Sciences.

Dr. North was a member of the Board on Radioactive Waste Management of the National Research Council from 1995 until 1999. He was the Chairman for the NAS report: "Disposition of High-Level Waste and Spent Nuclear Fuel: The Continuing Societal and Technical Challenges," published in June 2001.

Dr. North is a past president (1991-92) of the international Society for Risk Analysis, a recipient of the Frank P. Ramsey Medal from the Decision Analysis Society in 1997 for lifetime contributions to the field of decision analysis, and the 1999 recipient of the Outstanding Risk Practitioner Award from the Society for Risk Analysis.

Dr. North received his Ph.D. in operations research from Stanford University and his B.S. in physics from Yale University.

### **Dr. Eugene Roseboom, Ph.D.**

Dr. Roseboom is a research geologist and geochemist. He synthesized ore- and rock-forming minerals and determined their conditions of origin. He was elected a Fellow of the American Mineralogical Society and received the Meritorious Service Award of the Department of Interior. He has written several papers regarding the safe disposal of radioactive wastes, one of which was highly influential with the US Nuclear Regulatory Commission in revising its regulations to include the unsaturated zone. He has served as a United States Geological Survey Deputy Assistant Director for Engineering Geology and also as the Director's representative to the Nuclear Regulatory Commission on nuclear waste, and to NRC's Advisory Committee on Nuclear Waste (ACNW). After retiring from the USGS in 1994, he was a Scientist Emeritus until 2008.



# Sustainable Fuel Cycle TASK FORCE

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The Honorable Steven Chu  
Secretary of Energy  
November 18, 2009  
Page 5

## **Dr. Wendell Weart, Ph.D.**

Dr. Wendell Weart is a retired earth scientist from Sandia National Laboratory where for 25 years he was Scientific Program Manager for the Waste Isolation Pilot Plant. At Sandia he became a "Fellow" and Senior Scientist for Nuclear Waste management Programs at Sandia. He has served on National Academies of Science Panels and has been a senior scientific advisor to numerous international panels. He has been recognized as scientific leader as he was the recipient of the first annual "Wendell D. Weart Lifetime Achievement Award" from the Waste Management Symposium.

## **Dr. Ruth Weiner, Ph.D.**

Dr. Weiner is a Principal Member of the Technical Staff of Sandia National Laboratories, and is the Project Lead for Radioactive Materials Transportation Risk Assessment. She also served as tenured professor of chemistry and environmental studies at three different universities, and was Professor of Environmental Studies at Western Washington University for 20 years. She was a member of the NRC Advisory Committee on Nuclear Waste and is an adjunct professor in the Department of Nuclear Engineering at the University of Michigan.

Dr. Weiner is co-author of two textbook series: *Environmental Engineering and Environmental Pollution and Control*, which are in their fourth editions, and has published more than 130 technical papers. She has served as a Congressional Science Fellow and was recently elected a Fellow of the American Nuclear Society. She is a member of AAAS, INMM, and the Health Physics Society.

## **Dr. Isaac J. Winograd, Ph.D.**

Dr. Isaac J. Winograd is a Senior Scientist Emeritus at the U. S. Geological Survey. Over a 50-year career, all with the Survey, his research interests spanned the fields of hydrogeology, low temperature geochemistry, radioactive waste disposal, and Pleistocene paleoclimatology. He is a Fellow of the AAAS, American Geophysical Union, and the Geological Society of America.

In 1978 he served on President Carter's Interagency Review Group on Radioactive Waste Disposal. His 1974 and 1981 papers (published respectively in *Eos* and in *Science*) introduced the theoretical framework for utilization of the thick unsaturated zones of the Southwest for the disposal of spent nuclear fuel and other solidified toxic wastes.

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**David Wright, Chairman**  
Commissioner, SC Public Service Commission

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**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

# NWSC

## Nuclear Waste Strategy Coalition

November 19, 2009

Letter sent by facsimile

The Honorable Daniel Inouye  
Chairman  
Senate Appropriations Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Thad Cochran  
Ranking Member  
Senate Appropriations Committee  
United States Senate  
Washington, D.C. 20510

The Honorable David Obey  
Chairman  
House Appropriations Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Jerry Lewis  
Ranking Member  
House Appropriations Committee  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairmen Inouye and Obey and Ranking Members Cochran and Lewis:

The members of the Nuclear Waste Strategy Coalition (NWSC), are writing to express our concern over the role of the federal government in taking responsibility for spent nuclear fuel and high-level radioactive waste and to draw your attention to an October 23, 2009, draft Program Decision Memorandum directive from the Department of Energy's (DOE) Chief Financial Officer that, "all (Yucca Mountain) license defense activities will be terminated in December 2009."

This statement of intent goes completely against the expectations set forth by your Committees throughout the Fiscal Year (FY) 2010 appropriations process. The joint managers explanatory statement in the House Report 111-278 of the Energy and Water Development and Related Agencies Appropriations Act, 2010, specially states that, "the language and allocations set forth in House Report 111-203 and Senate Report 111-45 should be complied with unless specially addressed to the contrary in the conference report and statement of managers."

The House Appropriations Committee stipulated that \$70M of the appropriated funds "shall be for the management contractor to retain the sufficient legal, scientific and technical expertise necessary to maintain and update the Yucca Mountain license application and its supporting documentation as may be required by the Nuclear Regulatory Commission."

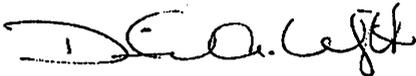
Although the House language was not included in Conference Report H.R. 3183, the final bill does specify that, "the conference agreement includes funds for technical and construction site management, business support and other activities to carry out the Administration's fiscal year FY 2010 plan." The Administration's FY 2010 budget request clearly identified funding request to support the continuation of the license application.

Failing to allow the license application to proceed through a process at the Nuclear Regulatory Commission that will determine the scientific, technical and engineering soundness of the Yucca Mountain facility ignores the statutory requirements set forth in the Nuclear Waste Policy Act (NWPA). Ignoring the NWPA also raises serious concerns over the federal government's future role in meeting its responsibilities and obligations to ratepayers who have already invested \$10 billion in a national repository and paid more than \$33 billion, including interest, into the Nuclear Waste Fund (NWF). DOE has stated they have every intent to keep collecting these fees, but for what purpose?

DOE's failure to fulfill its statutory and contractual obligations to remove spent nuclear fuel and high-level radioactive waste from 121 sites in 39 states is burdening U.S. tax payers and our rate payers with additional liabilities. In addition, the Administration's decision would also disrupt the DOE clean-up program in Hanford, Washington and the Savannah River Site in South Carolina, as well as agreements with states that currently store defense material. Congress must recognize that continued delay of the removal of defense waste could adversely impact two legally-binding agreements – the Batt and Tri-Party Agreements. We urge that you hold DOE accountable to explain how their proposed actions, or inaction, are consistent with the goals of the NWPA and previous commitments they've made to your Committees.

The NWSC was formed in 1993 out of frustration with DOE's lack of progress in developing a permanent repository for spent nuclear fuel and high-level radioactive waste, as well as Congress' failure to fully fund the nuclear waste disposal program since 1982. We are an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 46 member organizations in 26 states.

Respectfully yours,



David Wright  
Commissioner, South Carolina Public Service Commission and  
Chairman, Nuclear Waste Strategy Coalition

C: The President of the United States  
The Secretary of Energy, Steven Chu  
Members of the House and Senate Appropriations Committees  
Members of the House and Senate Energy and Commerce Committees  
Governors with stranded material in their state