

April 19, 2002

The Honorable Spencer Abraham, Secretary of Energy
United States Department of Energy
1000 Independence Ave., SE
Washington, D.C. 20585

Dear Secretary Abraham:

This letter transmits our initial comments and concerns regarding the Department of Energy's *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (February, 2002). For the reasons discussed in these comments, the Board of Eureka County Commissioners does not agree with the DOE that the EIS for the proposed repository is adequate, as it relates to the transportation components of the project.

The intent of the National Environmental Policy Act (NEPA) is to ensure that responsible decision makers have fully disclosed the environmental consequences of a proposed action before decisions about federal actions are made. Eureka County is concerned that the DOE is abusing NEPA, promising to consult with affected parties, analyze impacts, and identify necessary mitigation only after decisions have been made. Thus, DOE is using the NEPA process to attempt to justify decisions after the fact.

Procedural Issues

The FEIS discloses a significant amount of new information regarding the transportation elements of the proposed repository. The new information should have been included in the DEIS, so that the public would have adequate opportunity to review and comment on it. The overall EIS process has been characterized by a series of vague and late disclosures; failure to consult with those who would be affected; and the closure of the comment period before the public has been given a chance to review the latest analysis.

Although the DOE now says that the mostly-rail scenario is its preferred alternative, the Department still has not clearly defined the transportation elements of the proposed action. For example, the DOE has not identified a preferred rail corridor, or preferred alternatives within a corridor; has not decided whether shared rail use would occur; has not identified a plan for retirement of the rail line after closure of the repository; and has not decided on dedicated or general freight service. Despite the DOE's willingness to predict the environmental impacts of

nuclear waste disposal at Yucca Mountain for centuries to come, and its assertion that the FEIS is adequate for selecting a transportation mode and route, the DOE says it "cannot confidently identify the mode of transportation and routes that would be used beginning almost 10 years in the future and continuing for an additional 24 years." (FEIS, p. CR11-19)

Since the DOE has not issued a record of decision (ROD) with the FEIS, the public can only speculate on the exact nature of the proposed action, the mitigation measures the DOE will incorporate, and the monitoring and enforcement program for each mitigation measure.

Proposed Mitigation

Neither the DEIS nor the FEIS identify adequate mitigation measures related to the implementation of the transportation elements. Eureka County cannot accept the DOE's statement, "Once DOE selected a corridor and aligned a route, it could determine the need for and nature of any mitigation measures" (FEIS, p. CR11-18). If the EIS is sufficient for making transportation decisions, as the DOE says, the DOE must make specific mitigation decisions as well. Throughout the FEIS, the DOE relies on paper mitigation, including the "mitigation action plan" (p. 9-4), the listing of mitigation measures "under consideration" (p. 9-20, for example), and reliance on preconstruction surveys to identify mitigation needs (p. 9-25).

The DOE must provide specific, feasible mitigation for all impacts listed in Eureka County's previous comments, dated January 20, 2000, and August, 2001, and must include compensation for takings of private property rights. Mitigation measures must incorporate rigorous monitoring and follow-up, during both construction and operations, with State and local oversight, at DOE's expense.

Mitigation measures are incomplete or absent for impacts to local governments from emergency response and management activities made necessary by the proposed repository. Section 116(c) of the Nuclear Waste Policy Act (NWPA) does not eliminate the need to identify specific, feasible mitigation actions, nor does it constitute the universe of mitigation measures for public health and safety. The mitigation program must:

- Include a baseline health assessment and a \$1 billion trust fund for prompt and complete payments to persons affected by radiation along transportation routes, under the control of an independent third party;
- Address all phases of emergency management, including plans, funding, and training for preparedness, response, and recovery; and
- Eliminate or reduce foreseeable hazards from operations on main interstate rail lines and proposed rail spurs, including hazards at rail crossings, during switching, when shipments are parked on sidings, and from trail derailments.

In the *Site Recommendation Comment Summary Document* (pp. 3-69 and -163), the DOE says: (1) a baseline health assessment is unnecessary, (2) the Price-Anderson Act provides liability

coverage and financial protection for local governments, (3) section 116(c) provides the mechanism for funding financial assistance, and (4) the DOE will assess environmental and engineering conditions along the selected corridor in a subsequent NEPA document. These statements do little to reassure Eureka County, given the DOE's track record on health effects from past nuclear testing, for example. Nor do the statements identify specific, feasible mitigation measures, including monitoring and enforcement programs, as required by NEPA.

Specific Comments by Subject Area

Eureka County's initial comments on various subject areas are enclosed with this letter. In summary:

- Eureka County believes that potential impacts on agriculture, range management, water resources, solid waste management, and other subjects from the proposed Carlin spur rail line would be significant;
- The County is still concerned regarding potential impacts on cultural resources, especially grave sites, and does not accept the DOE's promise to address mitigation "during the identification, evaluation, and treatment planning phases of the cultural resource surveys" (FEIS, p. 6-84);
- The DOE has severely limited the scope of its economic analysis, lumped its economic analysis of Eureka County with two other counties, and shown bias against Eureka County in its discussion of economic impacts;
- The DOE's statements in the FEIS that rail spur operations and the safety of rail workers would be the responsibility of a contractor, that emergency first response would be the responsibility of the jurisdiction in which an accident occurred, and that mitigation measures related to emergency response and public safety will be worked out later underscore Eureka County's concern for the health, safety, and welfare of its residents;
- The FEIS attempts to downplay the effect of the proposed Carlin spur on private property in the Crescent Valley, and fails to address the conflict between the proposed rail line and Eureka County's master plan; and
- The FEIS reflects confusion and indecisiveness on the part of DOE regarding the need for fences and underpasses along the proposed rail spur, their potential impacts on wildlife and livestock, and their feasibility, especially given the extensive flood plain and areas of high water tables in the Crescent Valley.

Conclusion

Thank you for considering these initial comments and concerns regarding the FEIS for the proposed Yucca Mountain repository for spent nuclear fuel and high-level radioactive waste.

The Board of Eureka County Commissioners would again like to stress the need for full disclosure of impacts, based on open and broad-based consultation, in advance of a decision to select a rail corridor or any other transportation option.

Yours truly,

Pete Goicoechea
Chairman

cc:
Nevada Nuclear Waste Project Office
Affected Units of Local Government