

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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March 20, 2017

The Honorable Rick Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Secretary Perry:

Congratulations on your confirmation as the 14th Secretary of Energy. As you made clear in your confirmation hearing, the Department of Energy (DOE) plays a critical role in our nation's national and energy security, environmental cleanup, and support for critical scientific research. We look forward to working collaboratively with you to advance DOE's critical missions.

One critical mission, and a long-standing, bipartisan priority of the Committee on Energy and Commerce, is to address our nation's challenges relating to nuclear waste management policy. Your testimony before the Senate Energy and Natural Resources Committee appropriately noted the "daunting task" of managing nuclear waste facilities and carefully disposing of nuclear waste.¹ More than three decades ago, Congress passed the Nuclear Waste Policy Act (NWPA) to formalize our nation's nuclear waste management policy, which included committing the Federal government to take title for permanent disposition of spent nuclear fuel (SNF) and high-level radioactive waste (HLW). In passing the NWPA, Congress designated DOE as the lead agency to manage this national priority.

Scientists and dedicated professionals at DOE and its national laboratories spent decades and some \$15 billion to prepare the Yucca Mountain License Application (LA) for the Nuclear Regulatory Commission (NRC) to review. Since 2008, when the LA was filed with NRC, a number of decisions have been made that have impeded completion of the license review. While Congress considers legislation associated with managing SNF and HLW, we ask you take certain actions that could help facilitate implementation of the law.

¹ The Honorable Rick Perry testimony to the Senate Energy and Natural Resources Committee, January 19, 2017.

We appreciate the inclusion of funding in the President's budget proposal to restart the Yucca Mountain licensing process. This is a critical step towards fixing the broken system and we applaud this action.

To begin with, we believe you should reconstitute the statutorily required Office of Civilian Radioactive Waste Management (OCRWM). The NWPA established OCRWM, led by a Director who is "directly responsible to the Secretary" to carry out NWPA authorized programs.² As you have previously noted, disposing of our nation's SNF and HLW is one of the largest challenges facing the Department. These challenges require the dedicated attention of the office specifically established in law to implement nuclear waste policy, not the current structure, in which the nuclear waste program competes with other important nuclear priorities within the Office of Nuclear Energy.

You should also reassess the 2015 decision to pursue a defense-waste only policy. The NWPA required the President to make a determination whether HLW from atomic energy defense activities should be disposed of in a single common repository with commercial SNF. In 1985, President Reagan determined that a single common repository was required. In the ensuing years, American taxpayers contributed \$3.7 billion from defense budget accounts to study and develop the Yucca Mountain LA.³ In 2015, this policy was reversed with a decision to pursue a defense-only repository.⁴ We are concerned about the fiscal implications of departing from the long-standing policy.⁵ We believe you should reassess the cost and schedule estimates that served as a basis for the 2015 decision, which GAO recently identified as areas of concern.⁶

You should provide an initial level of funding to the State of Nevada, and the Nye County Commission. The NWPA authorized funding to assist Affected Units of Local Governments (AULG) with technical activities during the Yucca Mountain licensing process. We understand \$20 million in unobligated funding from previous appropriations remains in DOE's nuclear waste disposal accounts.⁷ We encourage you to provide targeted financial resources to AULGs, which would be a positive step towards building a constructive dialogue with Nevadan stakeholders.

As you are aware from your tenure as Governor of Texas, there are entities advocating to develop a centralized interim storage facility to temporarily store SNF until a repository is open for permanent disposal. If the Department determines that an interim storage facility is necessary, we expect you will work with us to amend the NWPA to allow a program to move

² Sec. 304 of The Nuclear Waste Policy Act, as amended.

³ Letter from the Honorable Ernest Moniz to Committee on Energy and Commerce Chairman Fred Upton, May 15, 2015.

⁴ Department of Energy, "*Draft Plan for a Defense Waste Repository*," December 2016.

⁵ Letter from Committee on Energy and Commerce Chairman Fred Upton and Ranking Member Frank Pallone, Jr. to the Honorable Ernest Moniz, April 14, 2015.

⁶ U.S. Government Accountability Office, "*Nuclear Waste: Benefits and Costs Should Be Better Understood Before DOE Commits to a Separate Repository for Defense Waste*," GAO-17-174, January 31, 2017.

⁷ Letter from Acting Assistant Secretary for Nuclear Energy Raymond Furstenau to Subcommittee on Environment Chairman John Shimkus, January 11, 2017.

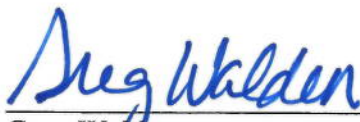
forward in a way that protects national interests, protects taxpayers, and does not interfere with the long-standing policy that SNF and HLW must be permanently disposed of in a repository.

Following the D.C. Court of Appeals ruling in *In Re: Aiken County*, our committee requested monthly reports on the balance in DOE's nuclear waste disposal accounts and detailed explanations of activities that are funded from those accounts. We request you continue sending the reports detailing expenditures from the Nuclear Waste Fund, as currently underway.⁸

You have a challenging task ahead as you constitute DOE's senior leadership team and develop your priorities and policies. We request that you work with us and committee staff to identify constructively a path forward to manage our nation's spent nuclear fuel as you fill out your leadership team and senior staff at the Department. In addition, the Committee would like to schedule a tour of the Yucca Mountain site with Members of Congress, and we invite you to participate on that tour.

We look forward to your response to this letter and your commitment to work with this committee to develop a sustainable solution to our nuclear waste management challenges. If you have any questions regarding this letter, please contact Andy Zach of the committee majority staff at (202) 225-2927.

Sincerely,



Greg Walden
Chairman
Committee on Energy and Commerce



John Shimkus
Chairman
Subcommittee on Environment

⁸ See Furstenau letter to Shimkus.