

**Eureka County**  
**Yucca Mountain Information Office**  
**P.O. Box 714**  
**Eureka, Nevada 89316**  
**775/237-5707**

February 6, 2009

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

RE: Comments on Update and proposed revision of Waste Confidence Decision; Federal Register, Vol.73, No. 197, October 9, 2008, pages 59551-59570

Dear Secretary:

Eureka County, Nevada, is an affected unit of local government under the Nuclear Waste Policy Act as amended. Eureka County has been a participant in oversight of the Yucca Mountain nuclear waste project since the early 1990's. We appreciate the opportunity to provide comments to the NRC on the proposed Waste Confidence Decision Update.

We have the following general comments:

In reviewing the Waste Confidence Decision Update and its history, it is apparent that the Waste Confidence Decision is reactive, not proactive. The past revisions have been required in order to align Waste Confidence with the schedule slippages and changed circumstances. The current revision, reaffirming Findings 1,3, and 5, and revising Findings 2 and 4, continues this pattern by, in effect, changing the definition of waste confidence from a guarantee that there will be a repository for the high level waste and spent nuclear fuel to an assurance that the waste can be managed until a repository is established someday.

While the Waste Confidence Decision is a finding by the NRC within the limits of its jurisdiction, the Decision has broad implications for private industry, other federal agencies, state and local governments, and even internationally. It is our understanding that the Waste Confidence Decision is a prerequisite in order for additional nuclear power plants to be built in the continued absence of a repository for nuclear waste.

The stop-and-go history of waste confidence by NRC is a symptom of what is missing – a comprehensive, coherent, systemic energy policy. DOE is currently paying millions of taxpayer dollars in judgments to utilities for not taking existing nuclear waste as promised by 1998. At the same time, DOE is entering into new contracts with utilities to take the next generation of waste, despite the fact that a Yucca Mountain repository is behind schedule and may never be built. A finding of Waste Confidence by the NRC does not change the fact that, more than fifty years

after nuclear power plants began to produce their toxic byproducts, the waste remains an expensive and complex problem that cannot be divorced from the production of nuclear power.

It is clear that NRC and Congress believe that a waste confidence decision is necessary in order to move forward with the next generation of nuclear power plants. However, given the continued slippage in developing a repository, we question whether waste confidence is becoming an empty promise rather than a meaningful finding.

Specific comment on Finding #2:

Regarding the specific question posed for Finding #2, whether or not a timeframe should be specified for the availability of a repository, we believe that in the past it has been proven that time limits do not work. Some argue that without a time limit, the responsibility for dealing with the nuclear waste from power plants will be foisted on future generations. However, experience has shown that waste confidence findings have not speeded up the process or enabled the proposed Yucca Mountain repository to be safe or approved sooner. The advantage of not assigning a time frame is that it allows technology and the experience of other countries' programs to be used to the benefit of the United States program. Perhaps removing unrealistic or farfetched time periods for a repository from the waste confidence decision will encourage the development of a comprehensive energy policy, the research and development related to reducing the radioactivity of nuclear waste, and international coordination and cooperation.

Overall, Eureka County believes that the focus on "management" of waste, rather than the more limiting "storage" allows for consideration of a more systemic approach to waste management and waste confidence that considers an array of options, and a more realistic timeframe for addressing a whole host of issues. Focusing the waste confidence decision on "management" also takes into account evolving energy policy at the national and international level, technology enhancements, industry responsibility and capability, and scientific research that could lead to new approaches and alternatives.

Thank you for considering our comments.

Sincerely,



Abigail C. Johnson  
Eureka County Nuclear Waste Advisor

cc: Ron Damele  
AULGs by email