



## Department of Energy

Washington, DC 20585

July 8, 2003

The Honorable Pete V. Domenici  
Chairman  
Subcommittee on Energy and  
Water Development  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your June 18, 2003, letter to the Secretary requesting that the Department of Energy respond to issues raised at the Senate Appropriations Subcommittee on Energy and Water Development field hearing that was held on May 28, 2003, in Las Vegas, Nevada. I appreciate the opportunity to provide you with more complete information and to set the record straight.

Three witnesses testified at the hearing: Robin Nazzaro of the General Accounting Office; Dr. Allison Macfarlane of the Security Studies Program of MIT; and William Belke, a retired Nuclear Regulatory Commission On-Site Representative. Two Senators, Senators Reid and Ensign, were present for the hearing. No member of the Department of Energy management either in Washington or Las Vegas was invited to testify.

### **Accusation of Witness Intimidation**

I have been particularly concerned about the serious allegations of witness intimidation that were made at the hearing. I have looked into those accusations, and I am confident that they are entirely unfounded. I am not aware of nor would I tolerate any effort by the Department or its contractors to intimidate DOE or contractor employees from testifying or otherwise coming forward to share their views.

Here is my understanding of what happened. I am informed that Senate staff approached Mr. Robert Clark, an employee of the Office of Civilian Radioactive Waste Management (OCRWM) Office of National Transportation, and Mr. Donald Harris, an employee of Navarro Research and Engineering, a Yucca Mountain Project contractor, to urge them to testify, and that one of the Nevada Senators also spoke to each of them about testifying at the field hearing. A few days before the hearing, Senator Reid also wrote me a letter requesting that I "compel" the testimony of Mr. Clark, and that I "encourage" the testimony of Mr. Harris.



I thought it was important that the Department and Navarro make clear to Mr. Clark and Mr. Harris, respectively, that DOE would not pressure them one way or the other and that whether they testified in this circumstance was their personal decision to make.

Accordingly, in the week before the hearing, Mr. Joe Ziegler, Acting Director of the Office of License Application and Strategy, spoke to Mr. Clark about the matter and assured him that the decision on whether to appear at the hearing was entirely his. Mr. Bob Hasson, Navarro Program Manager, sent a memorandum to Navarro employees, including Mr. Harris, conveying a similar message prior to the hearing. I am enclosing a copy of that memorandum. I likewise responded to Senator Reid on May 23, 2003, informing him that this was the Department's view. A copy of the correspondence is enclosed. Both Mr. Clark and Mr. Harris chose not to testify.

At the hearing, it was alleged that the Department had "instructed" Mr. Clark and Mr. Harris not to appear before the Subcommittee. As you can see, there is no truth to that allegation at all. To the contrary, DOE and contractor management took action to assure these employees that the decision on whether to appear at the hearing was entirely theirs, and they made their own decision on the matter.

At the hearing, Senator Reid raised the possibility that "intimidation at the project" could result in employees feeling "fear that [they] and [their] families will be made to suffer for simply telling the truth." This suggestion is not an accurate representation of the environment at the Yucca Mountain Project. At the Federal, Departmental, and Program level, policies exist to encourage employees to voice concerns, and significant protections are in place to shield DOE and contractor employees who raise health and safety concerns from retaliation or reprisal. I am continuing my efforts to ensure that everyone understands that we take seriously any allegations of employee intimidation. Following the hearing, my deputy, John Arthur, sent an e-mail message to all Yucca Mountain Project employees to reaffirm our long-standing commitment. In that e-mail, he stated, "I am committed to seeing to it that all of us know and believe we work in an open environment where people are free to raise concerns without fear of retaliation."

#### **Allegations that DOE Has Discounted Credible Health and Safety Questions in the Interest of Maintaining Schedule**

Senator Reid stated at the hearing that "DOE is intent on pushing the project forward regardless of the risk it poses to the health and safety of Nevadans and the rest of the country." Senator Ensign stated that, "There are real concerns that the Department of Energy's fierce commitment to its schedule ... has allowed an unrealistic timeline to take precedence over quality control." Neither the Senators nor the three witnesses participating in the hearing presented evidence that substantiated these allegations.

It is true that the Department is working very hard to submit the license application for a repository at Yucca Mountain to the Nuclear Regulatory Commission (NRC) by the end of next year. In striving to meet this objective, however, there has been no compromise in our commitment to quality work and protection of health and safety. OCRWM is

committed to submitting a license application that complies with 10 Code of Federal Regulations Part 63 and in which data, software, and models used in our safety analyses meet or exceed applicable quality assurance requirements. During the licensing proceeding, the license application will be subject to intense scrutiny from NRC staff, the State of Nevada, and other parties, and ultimately the NRC Commissioners must judge its adequacy.

### **Concerns on Quality Assurance (QA) Program**

At the field hearing, Ms. Nazzaro and Mr. Belke expressed their views on QA. Efforts to improve quality assurance have been a primary focus of our transition from site characterization to preparation for licensing, and the Program has been open about quality assurance problems and the work needed to correct them. While Ms. Nazzaro and Mr. Belke did discuss issues that are very important to the Program, neither revealed any new facts on this topic. Both witnesses' view of the program is limited and they have not had the benefit of seeing all of the changes we have been working hard to implement over the past year or so and continue to make. We agree that improving QA compliance is critical to our efforts. For over a year, we have focused on improving individual accountability for work and strengthening line management ownership of procedures so that quality is reflected in our work products. I described our ongoing efforts in a May 29, 2003, letter to the NRC (which is provided as an enclosure). Over the coming months and years, the GAO will have the opportunity to observe and assess our improvements. Of course, the success of our efforts in this regard ultimately will be judged by the NRC in its assessment of our license application.

### **Scientific Integrity**

The testimony of Dr. Allison Macfarlane also calls for some comment. At the hearing, Dr. Macfarlane indicated her dissatisfaction with a wide range of political and procedural determinations underlying the current repository program. She considers Congress's direction for DOE to characterize the Yucca Mountain site "a mistake," takes issue with procedures put in place to ensure that only qualified data are used, and specifically questions the objectivity of the Nuclear Waste Technical Review Board and the National Academy of Sciences. Perhaps most important, Dr. Macfarlane asserted that "[t]he science done in support of siting a repository at Yucca mountain has clearly been influenced by politics." However, she produced no actual evidence for that sound-bite allegation.

Dr. Macfarlane does not claim that any scientist doing work on Yucca Mountain has *in fact* sought to tailor his or her scientific efforts to reach a particular result or that any DOE manager has *in fact* sought to persuade any scientist to do so. Rather, her "science influenced by politics" accusation rests entirely on a word game built around the deliberately idiosyncratic misuses of the words "politics" and "political." Specifically, the entire foundation for the accusation is Dr. Macfarlane's observation in her testimony that Yucca Mountain science "is requested by and evaluated by managers at DOE who must fulfill legal and regulatory obligations under the Nuclear Waste Policy Act and

Nuclear Regulatory Commission and the Environmental Protection Agency rules.” This, she argues, means that “not only are the managers at DOE seeking particular knowledge, but the scientists themselves are required to gather data in a way that fulfills DOE’s *political* [read: statutory and regulatory] obligations” (emphasis added). In other words, because the science at Yucca Mountain is directed to assisting DOE in making a determination pursuant to criteria set by law, the science is “influenced by politics.”

All Dr. Macfarlane is really saying is that any time any scientist is asked to produce scientific work for the government, or for that matter anyone else, that will be used to help evaluate a particular project or approach that must meet legal or regulatory requirements, the work should be dismissed because it is “influenced by politics.” That assertion answers itself.

The scientific reputations of the DOE National Laboratories and the U.S. Geological Survey (USGS) and their scientific staff are impeccable. Dr. Macfarlane’s innuendo, that because these scientists were doing scientific work on a project that must meet particular statutory and regulatory requirements their work has therefore been tainted by political considerations, is entirely unfounded.

One example discussed by Dr. Macfarlane to support her allegation was chlorine-36 studies. She stated that DOE “did not like the results” of the original study related to the possible existence of fast paths for water flow inside the mountain and therefore had them redone. There are numerous problems with Dr. Macfarlane’s account of this matter, however.

First, Dr. Macfarlane fails to take note of the fact that this study whose results DOE supposedly “did not like” *was produced by DOE science*. Yet this fact, it seems to me, undermines the core of Dr. Macfarlane’s suggestion that the Yucca Mountain Project’s science is result-oriented, since it demonstrates that our science is directed not to finding “results we like” but rather to going wherever science leads us.

Dr. Macfarlane also fails to take note of the fact that, far from ignoring this study’s results, DOE incorporated them (and *not* those of the later studies of which Dr. Macfarlane complains) into its calculations for the Site Recommendation models. These models provide the key scientific information underpinning the Secretary’s conclusion regarding the suitability of Yucca Mountain for the siting of a repository. The use of the original study’s results demonstrates our commitment to making regulatory judgments based on the best available data, regardless of whether that information is favorable or unfavorable to Yucca Mountain’s suitability.

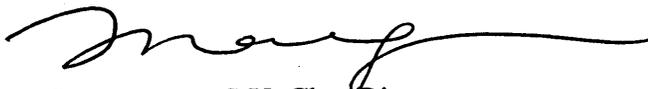
Further, based on models and data incorporating the results of the original study, DOE concluded that Yucca Mountain is in fact a suitable site for a repository because a repository there is likely to meet the stringent health and safety standards that EPA and the NRC have established. Thus, as it turns out, the original study’s results do not undermine the proposition that a repository can safely be sited at Yucca Mountain – a third key point of which Dr. Macfarlane also fails to make any mention.

Finally, Dr. Macfarlane suggests that there is something suspicious about the fact that DOE has continued to examine the results of this study. That is not suspicious. It is good scientific practice. We have also continued to examine the results of numerous other studies, as it is our responsibility to do, to make sure that the models and data underlying our conclusion that the repository can operate safely are well-founded and meet NRC data quality requirements.

I am confident in the quality and integrity of our scientific work, which project scientists and external peer reviewers have affirmed. It is unfortunate that none of these scientists or engineers was invited to testify on the topics discussed during the hearing. Had they been invited, I believe interested members of the public would have been given a more accurate view of the Project. The testimony of individuals with an understanding of the current status of DOE's actions to continue to improve our QA program also would have contributed to a more balanced understanding of this program. And, had testimony been sought from any of the DOE or contractor senior managers, we would have testified about our efforts to ensure our employees were not intimidated with regard to their personal decision on whether to testify at the hearing.

I hope that this information will assist the Subcommittee in understanding more fully some issues raised at the field hearing. Please let me know if I can provide any additional information or if you have any further questions.

Sincerely,



Dr. Margaret S.Y. Chu, Director  
Office of Civilian Radioactive  
Waste Management

Enclosures