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October 19, 2004

Ms. Sheryl Parker
HQ ACC/CEVP
129 Andrews Street, Suite 102
Langley AFB, Virginia 23665-2769

RE: Comments from the State of Nevada on the Nevada Test and Training Range Depleted Uranium Target Disposal Draft Environmental Assessment (September 2004)¹

Dear Ms. Parker:

On behalf of the Nevada Agency for Nuclear Projects, Office of the Governor, I am providing the following comments on the Air Force's "Nevada Test and Training Range Depleted Uranium Target Disposal Draft Environmental Assessment" (Draft EA):

General Comment

The Draft EA fails to address the role and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) in the disposal of depleted uranium (DU) under the Proposed Action.

The Draft EA acknowledges that the Air Force has used DU at Target 63-10 under a license granted by the NRC since 1982. However, the Draft EA does not contain any documentation that NRC was involved with decisions (contained in the Proposed Action) affecting the disposal of waste resulting from DU operations. Instead, the Air Force has taken it upon itself to determine how and where such waste will be disposed of.

Since the low-level radioactive waste (LLW) requiring disposal under the Proposed Action derives directly from NRC-licensed DU operations, it would appear that the authority for disposal of such waste rests with the NRC, not the Air Force. The final EA needs to clearly articulate the process by which the Air Force proposes to obtain NRC approval/concurrence for disposal of LLW from DU obtained and used under license to the NRC.

In addition, we contend that LLW generated as a result of activities carried out under an NRC license can only be disposed of at an NRC-licensed LLW disposal facility. The Proposed Action calls for the transfer of some DU LLW waste that is determined to be "classified LLW" to the

U.S. Department of Energy (DOE) for disposal at a “classified LLW disposal facility” (i.e., the Nevada Test Site).

Given that the Air Force is an NRC licensee and the LLW is generated as a result of NRC-regulated activities, we believe the Air Force would be exceeding its authority under the National Environmental Policy Act (NEPA) in transferring such waste to DOE for disposal in an unlicensed and “self regulated” disposal facility. It is also unclear whether NRC even has the authority to authorize disposal in an unlicensed self-regulated facility like NTS. The final EA needs to address this issue and describe how the Air Force and the NRC proposed to resolve this regulatory dilemma.

The State of Nevada is also concerned about the potential precedent that could be set if one agency of the federal government (i.e., the Department of Defense/USAF) is permitted to arbitrarily transfer LLW waste from NRC control and regulation to non-NRC, essentially unregulated, DOE control. A cornerstone of the NRC licensing process is that control of radioactive materials is strictly maintained throughout the lifecycle of the material. What the Air Force is proposing is to arbitrarily transfer NRC-licensed DU-related LLW waste to an unlicensed and self-regulated DOE disposal facility (i.e. DOE manages its own LLW disposal activities under the Atomic Energy Act, and DOE’s management structure is a matter of self-imposed federal policy, since there are no DOE regulations for such an activity contained in the Code of Federal Regulations).

In any event, the State of Nevada contends that giving DOE control of the classified LLW identified in the referenced EA would be inconsistent with the NRC regulatory process, as it would set a dangerous precedent by skirting NRC requirements for the lifecycle management of radioactive waste.

If a licensed disposal site for classified LLW is needed, DOE should be required to obtain a NRC license for its NTS LLW disposal facility.

Specific Comments

1.3.2 Depleted Uranium and Low Level Waste (page 1-7)

The Draft EA state that while DU can be obtained from a variety of sources around the world, “the DU in the penetrators used for testing and training at Target 63-10 derives originally from DOE sources.” However the Draft EA does not contain any documentation to support this assertion. Since the Air Force acknowledges later in the Draft EA (page 1-8) that “DU LLW disposed of at NTS must be of DOE origin,” the final EA must substantiate this claim by providing documentation as to the origin of DU munitions expended at Target 63-10.

It is also inaccurate to assert, as the Draft EA does in the last paragraph in section 1.3.2, that “[s]ince the DU originated from DOE, the LLW generated at Target 63-10 and the DU library qualify as DOE LLW.” As noted above, the fact that the Air Force operates under a NRC license governing the use of DU is the governing factor in determining how waste is to be disposed.

2.2 Proposed Action

Transportation (pages 2-4 through 2-6)

No waste shipments through Las Vegas: Over the past 10 years, the State of Nevada has worked closely with DOE to minimize risks involved with the transport of LLW to the NTS. A cornerstone of State/DOE cooperation is the agreement by DOE to route all LLW shipments so as to avoid the Las Vegas metropolitan area. The final EA should contain assurances, perhaps in the context of mitigation planning, that no shipments of LLW from Target 63-10 or the DU library will be permitted through the Las Vegas area.

Need for route identification and risk analyses: The Draft EA does not identify the potential highway routes that would be used to ship LLW from Target 63-10 and the DU library to either a commercial LLW facility or to the railhead in Barstow (should the Air Force decide to use rail as a mode of transport). In addition, the Draft EA does not contain any assessment of the risks associated with the shipment of said LLW nor any analysis of the consequences of a worst case accident involving this material.

The Final EA should clearly identify the routes proposed for shipments to commercial LLW facilities. Since there is only one such licensed disposal facility in the west – Envirocare in Utah – it should be a relatively simple matter for the Air Force to identify potential highway and rail routes between the points of origin and destination and specify the preferred route to be used for shipments, taking into consideration the need to avoid the Las Vegas metro area.

In addition, the final EA should contain an assessment of transportation risks and an evaluation of the consequences of a credible worst case accident involving a shipment of LLW from Target 63-10 or the DU library.

4.0 Cumulative Impacts

The analysis of cumulative impacts contained in the Draft EA appears incomplete and inadequate. It addresses only impacts in relation to other DoD and Air Force activities and ignores cumulative impacts with respect to the transportation of DU-derived LLW, DOE's LLW activities at NTS, and other DOE projects.

Shipments of LLW as a result of the Proposed Action will be occurring simultaneously with large numbers of LLW shipments coming to NTS from other DOE facilities around the country as well as from shipment of transuranic waste from NTS to New Mexico. The final EA should evaluate any potential cumulative impacts resulting from the interaction of LLW and TRU waste shipments from Target 63-10 and the DU library and these other LLW shipments.

In addition, the final EA should examine potential cumulative effects of the Proposed Action on DOE LLW disposal operations at Area 5, including the potential for disruption of activities, displacement of waste from other sources, the effect on the cumulative amount of radionuclides being emplaced in the soils and any potential for increasing risks of future off-site contamination, etc.

Finally, since LLW disposal operations resulting from the Proposed Action are expected to be ongoing for an indefinite amount of time, the final EA should look at any potential cumulative impacts with respect to DOE proposed Yucca Mountain High-Level Nuclear Waste Repository program, both in terms of on-site activities and in terms of the transportation of spent fuel (SNF) and high-level waste (HLW) to such a facility (i.e.,

potential interactions between Target 63-10 and DU library LLW and Yucca Mountain-related waste shipments). It is almost certain, for example, that if the Yucca Mountain project goes forward, shipments of SNF and HLW will be occurring simultaneously with and using the same highway routes as shipments of DU-LLW under the Proposed Action.

Appendix A – Interagency and Intergovernmental Coordination
for Environmental Planning

The Appendix contains no notification to the NRC or DOE of the Air Force’s proposal for disposal of LLW derived from Target 63-10 and DU library activities. These two federal agencies are central to the Proposed Action and must be fully involved in the NEPA process. There is a strong rationale for asserting, in fact, that both agencies should have been designated as “cooperating agencies” in the development of the Draft EA.

Thank you for the opportunity to comment of the Draft EA. If you have questions or would like additional information regarding these comments, please do not hesitate to contact me.

Sincerely,



Robert R. Loux
Executive Director

RRL/cs

cc Nils J. Diaz, Chairman, U.S. Nuclear Regulatory Commission
Mike Stafford, Nevada State Clearinghouse
Allen Biaggi, DCNR
Jolaine, Johnson, NDEP
Stan Marshall , NDH

¹ This letter was email (sheryl.parker@langley.af.mil) and sent by fax (757-764-1975) on October 19, 2004. The original signed letter was also mailed on that day.