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Mr. Paul M. Golan, Principal Deputy Director
U.S. Department of Energy, OCRWM
1000 Independence Avenue, SW
Washington DC 20585

Dear Mr. Golan:

On behalf of the State of Nevada, I request that you withdraw or clarify a clearly incorrect statement made recently by the United States Department of Energy (DOE), one which is directly at odds with other (correct) statements by DOE, and with Congressional mandates. Specifically, in DOE's May 2006 "Report to Congress: Spent Nuclear Fuel Recycling Program Plan," (SNF) in a discussion of the storage of spent nuclear fuel SNF for use in a recycling facility, DOE suggests that facilities built for the storage of commercial SNF "pending its recycling would not be subject to the restrictions on storage in the Nuclear Waste Policy Act." (The Act).

Addressing specifically the Act's prohibition against the creation of facilities for interim storage of waste in the State of Nevada, the proposed situs of a permanent repository, there are no exceptions predicated upon the particular purpose for which a storage facility is intended. Based upon information recently provided by DOE to Representative John D. Dingell (D-Mich.), and upon direction given to DOE by Congress in the specific context of storing SNF for recycling, it is unequivocally clear that interim storage of SNF in Nevada, for any purpose, is prohibited so long as DOE continues to pursue the establishment of a permanent SNF repository there.

I have reviewed recently published responses by DOE to inquiries from Rep. D. Dingell. In response to Rep. Dingell's question "What authority, if any, the Department has . . . to store high-level radioactive waste and spent nuclear fuel on an interim basis," DOE responded that "With enactment of the NWPA (Nuclear Waste Policy Act of 1982), Congress provided a detailed statutory scheme for commercial SNF storage and disposal that, by its specificity, severely limited the Department's commercial SNF storage and disposal options." DOE went on to explain that the NWPA permits DOE interim storage in two distinct instances, but stated that one of those authorizations expired in 1990 and that the other was conditioned upon "almost unattainable milestones." Discussing the concept of an MRS (Monitored Retrieval Storage)

facility, DOE observed that before such a facility could be constructed, the Nuclear Regulatory Commission must first have issued a construction authorization license for the permanent waste repository contemplated by the NWPA and that, furthermore, “The MRS cannot be located in Nevada.”

Confirming its position, DOE referred Rep. Dingell to DOE’s “Final Interpretation of Nuclear Waste Acceptance Issues” published in the Federal Register in 1995 (60 Fed. Reg. 21793), which likewise concluded that “The interim storage provision had expired and the MRS provisions were unusable” and that “Interim storage by DOE was contemplated by the Act in only two situations, neither of which currently applies.” DOE also took time to explain to Rep. Dingell that, in one instance where DOE did accept spent nuclear fuel from a utility prior to the existence of a permanent repository, it was only authorized to do so because it had contracted with the utility to do so before adoption of the Nuclear Waste Policy Act in 1982. *Idaho v. Department of Energy*, 945 F.2d 295 (9th Cir. 1991).

Recently, Congress appropriated funds “for the Department to develop a spent nuclear fuel recycling plan.” Conference Report 109-275 (accompanying H.R.2419, a bill “Making Appropriations for Energy and Water Development for the Fiscal Year ending September 30, 2006, and for Other Purposes”). The conferees explained that funds were being provided for DOE “to prepare the overall program plan and to initiate a competition to select one or more sites suitable for development of integrated recycling facilities.” Continuing to address the issue of the site for the anticipated facilities, conferees urged that DOE’s consideration should extend not just to DOE sites, but to a wide range of other possible federal and non-federal sites as well. Then, the conferees, still in this specific context of DOE’s siting of the recycling facilities stated: “The conferees remind the Department that the Nuclear Waste Policy Act prohibits interim storage of nuclear waste in the State of Nevada.”

The Department of Energy’s explanation to Rep. Dingell, and the direct guidance provided to DOE in the very same Conference Report which DOE relies upon for the funding of recycling initiatives, both confirm that there exists no exception, back door, or artifice that can be used to justify the interim storage of SNF in Nevada. Do not even imagine that the Department could prevail on this point.

Sincerely,

Robert R. Loux
Executive Director

RL:njc

cc: Nevada Congressional Delegation
Joe Egan