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Congress of the United States

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COMMITTEE ON ENERGY AND COMMERCE

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April 14, 2015

The Honorable Ernest Moniz
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Secretary Moniz:

On March 24, President Obama issued a finding that the development of a separate repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities (defense waste) is required,[1] pursuant to the Nuclear Waste Policy Act of 1982 (NWPA).[2] This determination reverses a 1985 Presidential determination that a defense waste only repository was not required and a 2002 Presidential determination that the Department of Energy (DOE) had provided a sufficient statement of basis to recommend that Yucca Mountain was qualified as a repository for defense waste. Since the 2002 statement of basis, the basic physical characteristics and volume of defense waste have not changed substantially.

This latest determination is a significant change from the bipartisan, 30 year nuclear waste management policy in which both defense waste and commercial spent nuclear fuel are jointly disposed in a permanent repository located at Yucca Mountain, Nevada.

The determination is based on an analysis of six factors identified in the NWPA:[3] cost efficiency, health and safety, regulation, transportation, public acceptability, and national security. The administration's reassessment of these factors is based on underlying assumptions that appear to disregard the existing work that has been accomplished to date on a permanent repository.

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[1] President Barack Obama, Presidential Memorandum "Disposal of Defense High-Level Radioactive Waste in a Separate Repository," March 24, 2015.
[2] Nuclear Waste Policy Act, 42 USC 10101.
[3] Nuclear Waste Policy Act, 42 USC 10101 Sec. (8)(b).

To provide a greater understanding regarding the determination to split defense and commercial nuclear waste disposal, please respond to the following questions by April 28, 2015:

1. How much has been spent to date by the federal government for activities related to defense waste in Yucca Mountain?
2. In the Department's estimation of a best case scenario, what is the fastest amount of time it would take to research, test, license and complete construction of deep geologic disposal site for civilian nuclear waste?
3. How quickly does the Department estimate a deep borehole disposal site could be researched, tested, and licensed? What scientific and technical efforts support DOE's findings with regard to design safety margins? Please provide DOE technical assumptions relating to the size, number, capacity, and associated borehole design criteria.
4. The report accompanying the determination[4] provides two tables providing low and high range cost estimates for both shared and defense only repositories, depending on geologic media chosen. Could the Department please provide the detailed studies used to develop these cost estimates and the assumptions that went into those studies?
5. The report states, "[t]he Presidential finding in Section 8(b) is necessary only for the separate disposal of Defense HLW. The NWPA does not limit the Secretary's authority to dispose of Defense SNF, or HLW and SNF resulting from the Department's research and development activities. The Department's authority to dispose of these waste forms separately derives from the Atomic Energy Act of 1954 and is implicitly recognized by the NWPA." Could the Department please provide the legal analysis for this conclusion? Does the Department believe that facilities constructed solely for the purpose of disposing of its HLW inventory must be licensed by the Nuclear Regulatory Commission?
6. The Department notes a number of changed circumstances since the original commingling determination was made, including the fact that much of the material has now been vitrified — or will be vitrified — and that heat loads are significantly lower. Has the Department performed any analysis that would indicate whether any of this vitrified material could properly be managed in a manner designed to further reduce the cost of its disposal and hasten the clean-up of affected DOE facilities?
7. What organizational and budgetary changes would be required for DOE to manage a new defense waste repository program, given the dismantlement of the Office of Civilian Radioactive Waste Management?
8. What money is DOE spending on this program in the current fiscal year?
9. Did DOE affirm with the Department of Justice (DOJ) that this determination would not increase existing liability or the likelihood of contractual breaches with affected states? If so, please provide DOJ's response.
10. Did DOE consult with affected state parties regarding the recommendation? If so, which states? Please provide the conclusions of those consultations.

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[4] Department of Energy, "Report on Separate Disposal of Defense High-Level Radioactive Waste," March 2015. P. 10

We look forward to working with you to find a solution for the disposal of our nation's nuclear waste. If you have any questions regarding this letter, please contact Andy Zach of the committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Frank Pallone, Jr.
Ranking Member