

Alliance for Nuclear Accountability * American Public Health Association * Clean Water Action * Environmental Working Group * Friends of the Earth * Greenpeace Honor the Earth * League of United Latin American Citizens * National Environmental Trust * Nuclear Information & Resource Service * Peace Action * Physicians for Social Responsibility * Public Citizen's Critical Mass Energy and Environment Program * Sierra Club * Taxpayers for Common Sense Action * 20/20 Vision * U.S. Public Interest Research Group * The Wilderness Society * Women's Action for New Directions * Women Legislators' Lobby (WiLL)

November 4, 2003

Re: Yucca Mountain project budget in FY04 Energy and Water Appropriations Bill

Dear House-Senate Energy and Water Appropriations Conference Committee Member,

As national environmental, public interest, taxpayer, and public health organizations we are writing to express our grave concern about the fiscal year 2004 budget as it relates to the controversial Yucca Mountain nuclear waste repository project.

The proposal to allocate \$765 million for the Yucca Mountain project, an increase of \$174 million over President Bush's request and \$308 million more than FY03's budget, is wasteful and unacceptable.

None of the longstanding concerns about the Yucca Mountain project have been resolved, although the Congress last year voted to allow the Department of Energy (DOE) to proceed with a license application. The project continues to be plagued by numerous environmental, scientific, policy and fiscal problems. These include, but are not limited to: the suitability of the site and DOE's yet unspecified repository design; the risks of transporting high-level nuclear waste through 45 states and the District of Columbia by truck, train, and barge; and the questionable legality of federal regulatory rollbacks -- the subject of numerous ongoing lawsuits before the D.C. Circuit Court of Appeals -- underpinning the Yucca Mountain site recommendation.

In fact, the U.S. Nuclear Waste Technical Review Board (NWTRB) has drafted a letter to DOE stating that data from the Yucca Mountain Project and the Nuclear Regulatory Commission's (NRC) Center for Nuclear Waste Regulatory Analyses "cast doubt on the extent to which the waste package will be an effective barrier under the repository conditions that have been presented to the Board." The Board letter concluded "...because of the seriousness of these corrosion concerns, we strongly urge you to reexamine the current repository design and proposed operation. The Board believes that the high temperatures of the current design and operation will result in perforation of the waste packages, with possible release of radionuclides."

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The waste packages are DOE's key barrier against radiation leakage at Yucca Mountain. On January 25, 1999 DOE told the NWTRB that the waste package itself would account for over 99% of the repository's ability to isolate radioactivity from the environment. The flaws cited by the NWTRB in this single-most important radiation barrier in DOE's proposed Yucca Mountain repository design make it clear at this crucial juncture that the project requires careful Congressional oversight and budget scrutiny.

A copy of the NWTRB letter and "Relative Contribution of Waste Isolation Barriers" bar chart are attached.

In testimony before the U.S. Senate Committee on Energy and Natural Resources on May 23, 2002 Gary Jones of the General Accounting Office testified in regards to the Yucca Mountain project that "DOE currently does not have a reliable estimate of when, and at what cost, a license application can be submitted or a repository can be opened...".

The uncertainty about when and at what cost DOE will submit a license application increased with the October 28, 2003 decision by the U.S. Court of Appeals for the District of Columbia Circuit. The ruling remanded *LeBoeuf v. Spencer Abraham* (Case No. 02-5265) to U.S. District Court for the District of Columbia for reconsideration. This case deals with alleged appearances of conflicts of interest involving DOE's former expert legal counsel, Winston and Strawn. The very same Winston and Strawn attorneys that worked on DOE's preparations for a license application to NRC also worked at the very same time as lobbyists for the industry group Nuclear Energy Institute.

DOE's unsuccessful defense tried to downplay the appearance of conflicts of interest by arguing that the role of Winston and Strawn in the license application would be limited. But the potential impact on schedule and licensing of such a DOE position is clearly shown by the affidavit of Howard K. Shapar, former NRC Executive Legal Director and Assistant General Counsel for Licensing and Regulation, quoted in the Court of Appeals ruling (page 12):

"Mr. Shapar identified a problem created by the Department's effort to eliminate a conflict for Winston. Mr. Shapar stated that "the artificial and curious limitations on Winston's scope of work...[will] have a clearly adverse effect on the successful and timely licensing of the project." Specifically, he found that the Department's position that the license application for Yucca Mountain Project "will not itself be subject to the [quality assurance ("QA")] process," and that the Department "does not plan to have a QA review of the License Application," was "truly astonishing and constitutes a grave mistake that may result in the Yucca Mountain Project being unlicensable." Based on his experience, "the license application itself...routinely has received the very highest level of quality assurance review. To abandon this requirement is a prescription for failure, and would by any measure be sharply contrary to NRC practice and sound public policy."

The Appellate Court instructed the District Court to determine “whether the Department [of Energy] adequately considered the apparent conflict of interest as required by federal and Departmental regulations.” This ruling could require that Winston and Strawn’s work for DOE from 1999 to 2001 be reviewed, or even that DOE start from square one on obtaining expert legal counsel. In any event, DOE’s announced December 2004 filing date for its license application to NRC will likely be delayed at least several months.

Given such uncertainties, Congress in the past has responsibly moderated the DOE’s excessive spending requests for Yucca Mountain activities. Now, more than ever, Congress should do so again. Therefore, we urge you to oppose the exorbitant \$765 million Yucca Mountain project budget proposal, which would amount to a whopping 67% increase over the FY03 budget. We likewise urge you to oppose the President’s excessive request for \$591 million, a 29% increase over the FY03 budget. Even the Senate’s proposed \$425 million budget is inappropriately high given the serious uncertainties of the Yucca Mountain project.

According to DOE in its report “Nuclear Waste Fund Fee Adequacy: An Assessment” (May 2001), DOE has spent more than \$8.6 billion (2002 dollars) on the repository program since its inception in 1982. The total cost of the Yucca Mountain project is currently projected to reach \$60 billion (2002 dollars), up 26% from the previous estimate. Actual costs will almost certainly exceed this projection. Given these run-away costs, Congress should restrict funding in the FY04 Yucca Mountain budget. Please see the attached “Escalating Total System Life Cycle Cost Estimates” chart.

Again, we urge you to send a strong signal in defense of public health, safety, and fiscal accountability by reining in the run-away costs of the Yucca Mountain project. We would be happy to discuss these concerns with you further. Please contact Kevin Kamps at NIRS (202) 328-0002.

Sincerely,

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