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January 20, 1993

Secretary of Energy Advisory Board
Task Force on Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585
Attn: Dr. Todd La Porte, Chairman

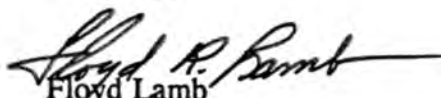
Re: Submission of Comments to Draft Working Paper Regarding Public
Trust and Confidence

Dear Dr. La Porte:

Lincoln County, Nevada, is pleased to submit the attached comments to the draft working paper concerning public trust and confidence recently completed by the Task Force on Radioactive Waste Management. Despite the Task Force's Violation of one of its own recommendations by not formally inviting written comments from stakeholders to the draft working paper, Lincoln County is providing the attached unsolicited comments as input to preparation of the final report to the full Secretary of Energy Advisory Board. In keeping with another of the Task Force's recommendations, Lincoln County would appreciate the courtesy of written response to the attached comments. In the event that staffing limitations characterize the Task Force and make such written responses impractical, the County would appreciate the opportunity for its representatives to discuss Task Force responses to the attached comments.

Your consideration of these comments is appreciated. Please contact Mr. Jason Pitts, Coordinator of the Lincoln County Nuclear Waste Project Office (702) 962-5497 regarding arrangements to discuss Task Force responses to the attached comments.

Sincerely,


Floyd Lamb
Chairman

cc: Mr. Jason Pitts
Mrs. Judy Foremaster, City of Caliente
Mr. Mike L. Baughman, Intertech Services Corporation
Members, Nevada State and Local Government Planning Group

**COMMENTS TO DRAFT REPORT OF THE
SECRETARY OF ENERGY ADVISORY BOARD
TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT**

**Submitted By:
Board of Lincoln County Commissioners
Caliente City Council
Joint City/County Impact Alleviation Committee
Lincoln County, Nevada**

INTRODUCTION

As one of ten units of local government which have been designated by the Secretary of Energy as "affected", Lincoln County is keenly interested in efforts by the Department of Energy to earn the trust and confidence of Nevadans. Pursuant to the County's rights of participation as described within the Nuclear Waste Policy Act, as amended, Lincoln County has reviewed the draft document entitled Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. The following comments reflect the observations of the County, the City of Caliente, and their Joint City/County Impact Alleviation Committee. The comments are offered in hopes that they may serve to inform the Task Force with regard to salient issues important to public acceptance of socially meritorious yet locally unwanted land uses, such as the repository proposed for Yucca Mountain.

General Comments - It is important for the County to note that on several occasions, the Task Force itself has violated what should be considered basic tenets of efforts to build confidence. For example, on numerous occasions, the Task Force has deferred public input until late in its meeting agenda, thereby all but eliminating the possibility for public comments to be effectively considered in meeting deliberations. If the public is to have any confidence in the decisions of advisory or policy/decision-making bodies, stakeholders and other interested parties must have the opportunity to be heard prior to any decisions being made. Decision-making prior to public input casts a dark cloud upon the public involvement process itself. A1

While the focus of the Task Force was heavily upon the DOE's civilian radioactive waste management program, only one Board meeting was held in Nevada. Such a deficiency in attention to the host region suggests a serious lack of sensitivity to important issues and opinions of local stakeholders. A2

Very little time and opportunity was given to interested parties to review and provide comments to the Draft Report prior to its consideration by the Task Force. It now appears A3

that the Draft Report will be presented to the full advisory board without ample consideration of stakeholder comments to the document. Interested parties are left to presume that little if any attention will be given to comments submitted to the Task Force in response to the document. Failure to adequately consider the concerns and interests of stakeholders can lead to serious erosion of trust and confidence in the activities of the Task Force.

Lincoln County is concerned that the actions of the Task Force imply an absence of sensitivity to important foundational principals for earning public trust and confidence. As a consequence the County finds it difficult to place a great deal of confidence in the validity of Task Force recommendations to DOE. If the DOE operates its high-level waste program in a manner consistent with actions of the Task Force, public trust and confidence will remain an elusive goal for the Department. If DOE desires to know what it will take to earn the trust and confidence of stakeholders, serious consideration must be given to receiving and considering public input on this issue. The Task Force's draft report should be considered by the DOE only within the context of what affected parties think about it.

Notwithstanding these concerns, the Task Force and its staff are to be commended for their efforts to bring into focus the elusive and not well understood issue of public trust and confidence, particularly as it relates to the siting of this Nation's first geologic repository for spent nuclear fuel and high-level radioactive wastes. Hopefully, the efforts of the Task Force will produce benefits through the enhancement of public participation in the repository program.

Specific Comments -

Page 2 , 1st paragraph - Unlike many other federal agencies, the Department of Energy both inherited and has perpetuated a legacy of environmental mismanagement which has produced documented cases of hazardous exposures to humans. Further, the DOE has dealt in the arena of "hidden hazards", those low-probability/high-consequence activities which breed a peculiar reaction of dread and mistrust within significant segments of the population. An understanding of these important distinctions between DOE and most other federal agencies is important to development of recommendations to earn back lost public trust and confidence. In short, DOE is not like "most other federal agencies".

Page 2, 2nd paragraph - The text here implies a prevailing assumption that DOE has maintained significant levels of public trust and confidence and has only to figure out how to "sustain" its credibility. Although not presented at this point in the draft report, there appears to be a great deal of evidence to suggest that the Department does not enjoy significant levels of public trust and confidence. One can not sustain what one does not have. Beyond sustenance, DOE must be concerned about earning significant measures of public trust and confidence. This important perspective appears to be missing from the Task Force's report.

Page 5, Figure - The downward slope of the dashed line labeled ideal infers that the Nuclear Waste Policy Act (NWPA) had the capability to produce an "ideal" repository siting conclusion. As the Act was amended in 1987, it clearly did not contain that combination of provisions which could produce an ideal siting outcome. Had the NWPA been carried out without amendment, it is also not clear that an "ideal" siting outcome would have resulted. The term "ideal" infers that the slope of the dashed line and related timeframe, could have been considered ideal. What evidence is there to suggest that a line of a flatter slope would not have been more ideal in terms of producing a preferable siting outcome? Perhaps a more sensitive and accurate label for the dashed line in the figure might be "anticipated".

Pages 2 through 8, PERSPECTIVE - This section does not address the fact that DOE and its predecessor agencies failed to communicate (apparently in some cases deliberately) actual risks to public health and safety associated with historical weapons production and testing programs. As a consequence, many persons may have been unnecessarily exposed to unacceptable levels of toxic radiation. This former breach of the public trust may be causally related to depressed levels of public acceptance for Department actions of today. It is not enough to recognize that DOE had environmental problems. What is important is that in many cases, the agency knew it was violating safe exposure limits yet apparently withheld this information from affected parties. As a consequence, any resistance on the part of the DOE today to release programmatic documents is viewed as a potential cover-up.

Page 8, 2nd paragraph - It is not clear how the figure on this page applies to radioactive waste management. The supposition that DOE may need to resort to a trial and error approach is not consistent with the performance assessment based ex-ante licensing requirements which are imposed by the Nuclear Waste Policy Act, as amended. The licensing process pursuant to Nuclear Regulatory Commission regulations does not provide for "trial and error". As a result, such an approach does not reflect a realistic alternative strategy for DOE consideration.

Page 14, 1st paragraph and figure - The text here fails to note that education/research sector trust in DOE has eroded over the past four years. Hypothetically, educators and researchers are not stakeholders, but are independent "third-parties". It should be viewed as significant then that the nonaligned interests have experienced and observed a continuing erosion of public trust and confidence in the Department. It is important to note that all other stakeholders other than environmentalists and public interests either are beneficiaries of DOE's waste management programs or receive significant levels of federal funding (ie. state and local government). The potential influence of enabling independent oversight through the provision of significant federal funding should not be overlooked.

Page 15, First Principles - Although intuitively obvious, the second principal suggests a relationship between the public and DOE which may contribute to erosion of public trust.

Like many other authors, the Task Force has made an intuitive assumption with regard to why the public mistrusts DOE. Without any compelling evidence, readers of the report are left with no firm basis for attributing current levels of mistrust.

As equally plausible, is the potential for frequent and largely negative media coverage of DOE activities to have resulted in an erosion of public trust and confidence. Lincoln County has previously provided the Task Force with extensive testimony and documentation descriptive of the character of media coverage of the Yucca Mountain project in southern Nevada. The County is disheartened to see in reviewing this report that the Task Force has apparently decided to ignore such testimony and evidence.

Because DOE programs involve complex technology, it is not at all unreasonable to expect that news accounts represent virtually all of the information many persons possess with regard to agency activities. When one considers cognitive processes and the role of the availability heuristic, the potentially significant role of media as an influencing variable in shaping public attitudes becomes evident. In the DOE trust arena, what is uncertain is the extent to which knowledge which is not experience based is translated into convictions and behavioral actions. Without more insight into these issues, recommendations of the Task Force may significantly miss the mark.

Page 26, 1st partial paragraph - While the public's reaction can agreeably not be purely attributed to NIMBY-ism, a strong element of this syndrome must be associated with opposition in Nevada to the repository program. One cannot attribute opposition at the State level solely to mistrust of DOE when Nevada's leaders oppose DOE efforts to study Yucca Mountain in one breath, then follow with a strong argument that DOE funding to maintain the weapons testing program at the Nevada Test Site must be continued. If one cannot trust the DOE to manage radioactive waste, how can the agency be trusted to safely conduct tests of nuclear bombs? Call it Not-In-My-Backyard, Not-In-Anyones-Backyard, or Not-In-My-Term-Of-Office, but the Task Force must recognize such opposition for what it is. L

Page 30, Finding #3 - The conclusion that DOE has not implemented many creative initiatives for involving affected parties in predecisional participation is quite accurate. DOE must be made aware that each and every discretionary action is a potential opportunity for public participation. While interested parties may not choose to participate in every decision, it is better for them to have had the opportunity than to have been precluded from a decision process whose outcome was unsatisfactory.

Page 30, Finding #4 - Because of the oversight responsibility that the State of Nevada and affected units of local government have under the NWPAA, as amended, it is unlikely that such entities would appropriately be involved in programmatic decision-making. This can be considered especially true of the State of Nevada, whose fervent opposition to even the characterization of Yucca Mountain would seemingly prevent any motivation for improving upon DOE's execution of its fiduciary responsibilities pursuant to the NWPAA. Lincoln M

Federal government entities and their representatives exist for the sole benefit and are singularly responsible to the public. Government exists to serve the needs of the public. The public does not exist to serve government, nor is there any fiduciary responsibility in this regard. When governments view the public as charges rather than employer, erosion of public confidence is a clearly predictable outcome. It is not the responsibility of the government to hold the public accountable for its actions. Rather it is the public, through the use of various federal agencies, which is vested with the responsibility for management of its actions. The DOE is an extension of the public, created by the public, for the sole benefit of the public. Employees of DOE are also members of the public. Casting these principles in a DOE vs. the public light, may contribute to rather than resolve gaps in public confidence. A recasting of these principles might consider whether we are prepared to trust ourselves to empower a federal agency to act on our behalf and when the agency fails to perform, trust ourselves to make necessary corrections. In this regard the public has the responsibility to participate in the policy-making arena to craft the appropriate role for government.

Page 17, 4th full paragraph - The second sentence suggests that DOE has remained committed to only the economic or industry benefiting component of the "four bargains". Is not a push to resolve the Nation's radioactive waste problem also potentially associated with a commitment to the ethical bargain? Most, if not all residents of the United States presently enjoy the benefits of the electrical energy base provided by nuclear power. At a minimum, products manufactured with the use of nuclear energy are consumed and used daily by American citizens. A strong ethical basis remains for the resolution of the radioactive waste management dilemma. I

Page 18, 1st partial paragraph - The last sentence of this paragraph fails to recognize that in addition to the State of Nevada and Nye County, the Nevada counties of Lincoln, Clark, Esmeralda, Mineral, Churchill, Lander, Eureka, and White Pine, and Inyo County in California, each enjoy rights of participation and oversight pursuant to the NHPA, as amended. Between these nine counties, Nye County and the State of Nevada, the differences in entitled authorities and rights under the Act are limited. The State of Nevada has sole authority to veto the selection of Yucca Mountain as a repository site. Both the State of Nevada and Nye County are entitled to have "on-site representation" at Yucca Mountain. All other rights for oversight and participation pursuant to the NHPA, as amended, have been extended to the balance of "affected units of local government". J

Page 25, Finding #3 - As has been the case in other published studies, the Task Force report has causally linked past problems at DOE sites to present low levels of public trust and confidence in the agency. Yet, nowhere has any firm empirical evidence been offered to support such a relationship. For many who claim to not trust DOE, they are too young to have had any direct experience with historical DOE programs. In fact, surveys conducted by the State of Nevada (and provided to the Task Force) indicate that those living downwind of the Nevada Test Site and others who have had direct experience with radioactive exposure are in fact more trusting of DOE than those without such experience. K

County and other affected units of local government might on the other hand be concerned that site characterization studies go forward to finally determine whether or not Yucca Mountain is a safe location for disposal of radioactive waste. In this vein the counties might be willing to advise DOE as to best practices for conducting studies so as to address issues of particular local concern.

Page 35, Design Premise, 4th bullet - While assurance of negotiated benefits is important, the nature of the congressional appropriations process all but precludes the ability of DOE to offer such guarantees. DOE cannot commit itself to assuring the availability of negotiated benefits.

Page 37, Recommendation #4, 3rd, 4th, and 5th bullets - The report might highlight the potential for application of these recommendations in the aforementioned Director's Forums.

Page 37, Recommendation #5 - The phrase, "To make the Department's scientific work even more credible, it should", suggests an unnecessary bias which may erode credibility of the Task Force's own findings and recommendations. The Task Force was not charged with evaluating the credibility of DOE scientific studies, nor did the Task Force consider any evidence pertaining to this matter. As a consequence, the Task Force is being presumptuous when it infers that the Department's scientific work is credible. The making of such inferences might best be left to the National Academy of Science and the Nuclear Waste Technical Review Board.

Page 38, Specific Measures ... #1 - Here, the Task Force appears (to the credit of situs county representatives) to have been lobbied to ensure an equitable distribution of program presence and benefits to the repository situs jurisdiction. In so doing, the Task Force has seriously overlooked the broader allocation of risks and benefits which must be considered for the repository as a system. DOE will not be enabled to dispose of waste at Yucca Mountain without first transporting said waste through numerous nonsitus jurisdictions. While the situs county will receive employment and income related benefits, adjacent counties may bear incremental risks of exposure through a variety of pathways. The insensitivity demonstrated by the Task Force to these critical issues of distributional equity are unfortunately consistent with that of the Department itself. Recommendation #1 is a classic example of the blind leading the blind.

Page 38, Recommendation #3, 1st bullet - What Safety Review Board? Does such a board presently exist?

Page 41, Recommendation #1, 4th bullet - Because the situs County has little or no jurisdiction or decision authority over the Yucca Mountain project, it is unclear what the Department might expect to gain from bargaining with such a jurisdiction. If DOE were to merely seek to obtain moral support or a cooperative relationship, similar terms and conditions should be negotiated with other jurisdictions which will host various facets of the

repository system. The Task Force must recognize that while there may technically be only one situs county (pursuant to the NWPAA), several counties will serve as hosts for various components of the repository system in Nevada.

Page 41, Recommendation #3, 1st bullet - Given the extreme opposition to repository siting which has evolved in Nevada, and the likelihood that similar opposition will surface in any other locale considered as a site, this recommendation is a cruel deception of the potential that consideration of multiple sites might somehow make situs jurisdictions feel better about the process. T

Page 42, Recommendation #3, 2nd bullet - A more appropriate recommendation would suggest that the current repository program be limited exclusively to waste from existing commercial nuclear power plants, and that the waste stream from a new generation of nuclear power plants would require a separate disposal strategy. As long as the current repository program is seen as perpetuating the construction and operation of nuclear power plants, there will be a significant element of opposition to DOE's waste management program. U

Page 44, 6th bullet - Owing to the Task Force's previous recognition of the unique standing of the situs county, here might have been an appropriate place to include Nye County as a contributor of recommendations for members of the panel proposed by this recommendation. V

Page 44, 7th bullet - The significance of deferring until 1996 any decision about whether or not to reorganize the OCRWM is not immediately obvious? Does the Task Force believe that the potential exists for DOE to have made significant progress with the public and consequently its chances for siting during the next three years? Some explanation for the timeframes suggested by the Task Force would appear appropriate. W

Rolf Lidskog
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3/2/93

A. Data either collected by the Task Force or reviewed by it indicate that neither the Nuclear Regulatory Commission nor the nuclear industry enjoy significantly more trust than the Department of Energy. Consequently, the panel feels that neither can be depended on to bolster public trust and confidence in DOE's radioactive waste management activities. If the situation was otherwise, the Task Force's recommendations would have been substantially different.

B. For the civilian program, siting is the overwhelming public focus and thus the distinction between general policy and proposed site is not especially meaningful. That is not the case with respect to the environmental restoration and defense waste management program. There the lack of trust is mostly associated with general policy, in part because siting issues have not yet become ripe.

C. The Task Force notes the concern about oscillating between a conception of risk that is "real" and one that is socially constructed. In general, its discussion focuses on "real" risks upon which regulatory judgments are made. The panel fully recognizes that perceived risks, which are socially constructed at least in part, can influence the trust and confidence judgments of the public.

D. The Task Force believes that public participation is an essential ingredient in any strategy for strengthening trust and confidence. But it also feels that participation, per se, will soon turn into a hollow exercise if Departmental policies are not adjusted as a result of the input received. This perspective is reflected in its emphasis on partnerships and empowerment.

E. Although there were many members of the Task Force that would have eagerly considered these important and intriguing questions, they and their colleagues felt that the Draft Report was not the vehicle for doing so.

F. Revisions have been made to discuss in greater detail the implications of those institutional differences. See pages 33-35.

Comments on "Earning Trust and Confidence: Requisites for Managing Radioactive Wastes". Final report (draft) of the Secretary of energy advisory board, Task force on radioactive waste management, December 1992.

1. Trust in RWM or DoE?

It seems as the report - although it explicitly addresses itself to RWM (see its title) - focusses on DoE: how can DoE and its agencies (esp. OCWR and EM) earn trust from the public? Question needs to be raised concerning to what extent the public trust on RWM is depending on DoE and to what extent is it dependent on other actors and institutions?

My opinion is, that not only nuclear agencies, but also nuclear reactor owners could be the target for public mistrust. Quite important is also to stress the trust/mistrust on nuclear power and RWM as technical system (cf. Oiddens 1991)

2. Trust concerning policy or site-specific proposals?

Most often conflicts occur when a policy gets spatial dimension and a specific area is affected (cf. Blowers et al 1991, Kemp et al 1986). Referring to opinion polls (cf. p.12-13) is relevant in discussing peoples attitude to general policy, but faced with the spatial outcomes of a policy (i.e. proposed as site for RWD) the local populations reaction will not be guided by the attitudes found by the opinions polls.

Thus, important is to consider if the trust concerns the general RWM-policy or a site-specific proposal for RW-disposal. In the end (e.g. p. 39). It focusses on trust-gaining concerning site-specific proposals. May the report in a more explicit way discuss these two different objects (general policy - proposed site) and discuss the relations between them.

3. The social dimension of risk

Like Beck (1986) the report seem to oscillate between a definition of risk as 'real' (a phenomenon not related to human being's perception) and as social (constructed by human being - cf. "reasonable assurance" (DoE, p.5) and "to reduce socially acceptable levels of risks" (EM, p.6))

This oscillation may be theoretically grounded, but I miss a discussion on the risk-concept and the relation between these two dimension of the concept. As it now is this ambiguous use of the concept is confusing. And this distinction is crucial for which role the public should have.

4. The participation

The aim of public participation seems to be first and foremost to create trust (e.g. p.8, 9, 14), not so much to affect the RWM-policy as such. At the same time, the report states that "DoE must trust in the public..." (p. 14). What is the implication of "trust in the public"? A discussion is welcomed here concerning to what degree public participation should be able (and be allowed) to make a change in the policy. To what extent implies a "trust in the public", a possibility to affect the RWM-policy already chosen? If not the public have this possibility, why should they be motivated to participate? Why should they choose to channelise their resources to the formal process if it they do not perceive it as a way to affect the policy? A discussion on not only the formal/procedural dimension of participation but also substantial (potential effects on policy) is welcomed. If not, the public may perceive the invitation to participation as a cooptation.

At the same time, the tension between the public and the science needs to be discussed. What are the proper roles of the public, the politics and the science in this multidimensional issue?

This leads to a general question of the science in relation to RWM. Which role should science take? For the natural science it is more clear, but for social science it is not. Should the science contribute to the state's (DoE's) effort to make itself credible and increase its public support? This report is an illustrative example of how social science is not only a spectator, but also a participant in policy-making. Therefore, I would like to have a discussion on the role of social science in RWM-policy.

I also lack a discussion on the constructive role mistrust and critical opinion. In short, critical opposition:

- i) may be necessary to gain trust (cf. p. 38 in this report, Blower et al 1991).
- ii) may also provides with relevant knowledge which the scientific and planning perspectives not will discover (cf. Douglas 1986, Kemp 1991).
- iii) may hindrance the implementation of RWM

Concerning the local perspective and knowledge (see ii) above). If using economic massive economical incentives to make a siting possible (cf. p. 39) there is a risk that relevant local knowledge (which a opposition may provide with) will not be brought to the light.

DETAILED COMMENTS

- very interesting comparison between OCWR and EM. However, in the discussion on findings concerning OCWR and EM (pp. 27-34) this institutional/structural differences seem not to be paid enough attention to.

- There is - and probably will not be - any consensus between different groups (and individuals) perception and cognitive understanding of risks (cf. p. 29, 35: "winning trust of one segment of the public often involves losing the trust of some other"). Thus they face different decisional situation (cf. the discussion of different value trade-offs on p. 7). This implicates that the conditions that promote institutional trustworthiness (p. 14) is to be seen as ideals (to strive to reach) rather than conditions.

References

- Beck, U. (1986) *Risikogesellschaft. Auf dem Weg in eine andere Moderne* Frankfurt: Suhrkamp Verlag [Translated 1992: *Risk Society. Towards a New Modernity* London: SAGE].
- Blowers, A., Lowry, D. & Solomon, B.D. (1991) *The International Politics of Nuclear Waste* New York: St. Martin's Press.
- Douglas, M. (1986) *Risk Acceptability According to the Social Sciences* London: Routledge & Kegan Paul
- Giddens, A. (1991) *The Consequences of Modernity* Cambridge: Polity Press.
- Kemp, R. (1990) "Why not in my Backyard? A Radical Interpretation of Public Opposition to Deep Disposal of Radioactive Waste in the United Kingdom" *Environment and Planning A* 22 pp. 1239-1258.
- Kemp, R., O'Riordan, T. & Purdue, M. (1986) "Environmental Politics in the 1980s: The Public Examination of Radioactive Waste Disposal" *Policy and Politics* Vol. 14, No. 1, pp. 9-25.

Written 2 March 1993 by Rolf Lidskog, University of Uppsala and University of Örebro

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12/18/92

A. The Task Force was presented with two "impossibility" conjectures. The claim that public trust and confidence can never be restored as long as "the federal government is attempting to subdue one state and force it into an arrangement it adamantly opposes" is one of them. (The other was that the panel's recommendations could never be implemented because the state of Nevada was intractable.)

In its discussion of the civilian radioactive active waste management program (pages 22-27) and elsewhere, the Task Force recognized the extremely negative impact of the 1987 NWPA Amendments on the state of Nevada and on the MRS program. It does not however, accept either "impossibility" conjecture. But, even if the assertion advanced here were correct, the importance of demonstrating that the Department is worthy of trust is not diminished.

B. The Task Force sought not to underestimate the difficulties that DOE will encounter if it seeks to strengthen public trust and confidence. One of those is convincing the state of Nevada that there are areas where interests overlap so that mutual confidence-building measures might be agreed to.

C. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 61).



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December 18, 1992

Dr. Daniel P. Metlay
Secretary of Energy Advisory Board
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1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

I would like to take this opportunity to make several comments and suggestions concerning the discussion draft of the Secretary of Energy Advisory Board Task Force on Radioactive Waste report. While we are not submitting detailed comments at this time, certain aspects of the draft require some revision even before the public draft is published for comment.

Let me begin by stating that, for the most part, I think the Task Force has done an excellent job describing the trust and confidence problem and examining how the problem is manifested in the DOE Environmental Restoration and Waste Management (EM) program and the Office of Civilian Radioactive Waste (OCRWM). The report is most insightful in its comparison of the differential approaches affecting trust and confidence taken the EM and OCRWM programs.

Forced Siting and its Impact on Trust and Confidence

Throughout the report, it is emphasized that the key to restoring trust and confidence is the involvement of states, communities and the public in program decision-making by making the process more open and more scientifically based and by empowering stakeholders in meaningful ways. In the case of DOE/EM programs, this approach appears to be bearing some fruit. However, in the case of the OCRWM repository program (and other initiatives such as the MRS siting effort), little positive change can be seen.

Perhaps the single most damaging flaw in the draft report is its failure to address directly the implications of a forced siting approach, such as the one now being pursued for the first high-level radioactive waste repository, on not only trust and

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confidence in the program, but also on the ultimate success or failure of current national waste disposal policy. The fact is that DOE's credibility with respect to the civilian radioactive waste program is not only tied to its past history of mishandling defense waste activities nor even its prior failures involving spent fuel disposal and storage. DOE's credibility and the level of trust state, communities and individuals have in the Agency are also intimately linked to the way the State of Nevada has been treated with respect to Yucca Mountain and the ongoing attempts to force the repository on an unwilling state.

I would submit that trust and confidence cannot be restored as long as the federal government is engaged in attempting to subdue one state and force it into an arrangement it adamantly opposes. The discussions and findings of the draft report seem to support this contention. However, the recommendations, especially those that address OCRWM, seem to imply that by being more attentive to the State of Nevada and by attempting to be more open and forthcoming, thrust and credibility will somehow be restored. The report needs to acknowledge explicitly that the very fact Yucca Mountain remains the only site under consideration and the nation continues to pursue a forced siting solution to the problem of high level waste disposal is the major reason why trust and credibility are unlikely to be restored any time soon.

Simply put, Yucca Mountain and all it implies poisons the well not only for improved trust and confidence for DOE in Nevada, but it also has a significant impact on other DOE siting efforts. The Nuclear Waste Negotiator's attempts to find a MRS site are an example of this spin-off effect. A number of potential host states and communities have demurred from pursuing the MRS because of fears that those states/communities would ultimately be treated like Nevada if they were to let DOE get a foot in the door. This type of reaction is quite understandable and will continue to contaminate future federal-states interactions.

A Comment of a the Recommendations for OCRWM

While it is not my intent at this time to provide specific comments on all of the recommendations contained in the report, there are two points to be made, one general and one fairly specific.

First, there seems to be something of a disconnect between the findings of the report and the recommendations. The findings describe a situation where the current program is in gridlock; where OCRWM has failed to act in ways that promote trust and confidence; and where almost everything about the program indicates that restoring trust will likely be impossible. However, in the recommendations section, a number of proposed actions are laid out that seem to imply that if these initiative are taken, the program can be salvaged. This is simply not the case. While the

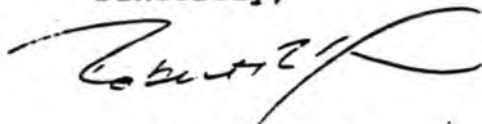
recommendations contained in the draft would have utility in the context of a new facility siting effort, they would do almost nothing to "fix" the current flawed program, which is burdened by the history and abuses of Yucca Mountain.

Second is a comment directed specifically to the first recommendation under "Specific Measures and Policies that Might be Adopted by OCRWM" on page 41 of the draft report. The recommendation states that DOE should seek some form of "bargain" with the State of Nevada and that same terms and conditions should be offered to the situs county, "whether or not the State enters into a relationship" with DOE. This suggests that DOE can circumvent the State and deal only with one of its political subdivisions. Such action would, I submit, have exactly the opposite effect to promoting increased trust and confidence in the program. It would be confirmation that nothing has changed and DOE is continuing to divide and conquer in pursuit of its forced siting policy. In fact, the recommendation seems to be in direct conflict with other findings and recommendations concerning the need to empower States and communities and reduce the level of conflict in the process.

The Task Force report should make quite clear that DOE must learn to deal effectively and honestly with states before there is any hope of being able to site nuclear waste facilities. The first step in doing that is to admit that the current approach (with Yucca Mountain as its most visible manifestation) was and is a mistake and begin the search for new solutions from a position of honesty and openness.

I hope these comments are helpful to you in preparing a revision of the draft report for formal review. The Task Force has a unique opportunity to assist DOE and the new administration in breaking away from hardened positions which are leading only to more failures and to formulate new, forward-thinking approaches, based on the lessons learned from the past, that will produce workable solutions to the nuclear waste management problem.

Sincerely,



Robert R. Loux
Executive Director

RRL/cs

Robert Loux
Executive Director
Agency for Nuclear Projects
Nuclear Waste Project Office
Carson City, Nevada

3/8/93

A. The Task Force was presented with two "impossibility" conjectures. The claim that public trust and confidence can never be restored as long as "the federal government is attempting to subdue one state and force it into an arrangement it adamantly opposes" is one of them. (The other was that the panel's recommendations could never be implemented because the state of Nevada was intractable.)

In its discussion of the civilian radioactive active waste management program (pages 22-27) and elsewhere, the Task Force recognized the extremely negative impact of the 1987 NWPA Amendments on the state of Nevada and on the MRS program. It does not accept either "impossibility" conjecture. But, even if the assertion advanced here were correct, the importance of demonstrating that the Department is worthy of trust is not diminished.



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March 8, 1993

Dr. Daniel P. Metlay, Executive Director
Secretary of Energy Advisory Board
AC-1
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

Last December, I provided you with comments on the discussion draft of the "Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management." We have completed our review of the more recent version of the report released in January for public comment and find that it is substantially unchanged from the discussion draft. The comments we provided in December continue to be pertinent to the new draft. I have enclosed a copy of my letter to you of December 18, 1993 and ask that you consider the comments contained therein as comments on the current draft of the Task Force's report.

As I noted in the earlier comments, the Task Force report does a very good job describing the problem of lack of trust and confidence and how it has been reflected in the DOE's Environmental Restoration and Waste Management program and Civilian Radioactive Waste program. It is refreshing to see a frank, thoughtful and often insightful evaluation of DOE programs emerge from a DOE-sponsored study.

Despite this effort at critical self-evaluation, the final draft of the Report continues to miss what may well be the central issue affecting trust and confidence in the civilian HLW program. That is the issue of forced facility siting. Like a cancer in the corpus of the nuclear waste management and disposal effort, the continuing single-minded determination by DOE to proceed with the Yucca Mountain repository in the face of technical concerns and strong and consistent State of Nevada opposition eats away at the credibility of any proposals that may be made for improving trust and confidence in the federal waste program.

A

As long as the State of Nevada remains the target of a forced siting process, with Yucca Mountain as its focus and symbol, none of the recommendations for improving trust and confidence contained in the Task Force report are likely to have much credibility. On the one hand, the DOE cannot expect to develop increased trust and confidence in the integrity of its program when, on the other hand, DOE continues to be engaged in the antithesis of that approach at Yucca Mountain.

Thank you for the opportunity to comment of the draft of the Task Force's report.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a large, stylized flourish at the end.

Robert R. Loux
Executive Director

RRL/cs
Enclosure

Brad Mettam
Yucca Mountain Project Coordinator
Inyo County
Planning Department
Independence, California

12/22/93

A. Task Force agrees; see pages 15 and 18-19.

B. The Task Force believes that a credible scientific process is the best way of identifying precisely what the uncertainties and complexities are, and just as importantly, whether there are design options available to buffer the uncertainty and to simplified the complexities.

C. The Task Force takes the position that any regulated entity, including the Department of Energy, has a right, if not a responsibility, to petition its regulator for changes in rules and standards with which it disagrees. If the Department wishes to strengthen public trust and confidence, however, those petitions should be public and should be resolved in an open forum. The same principle holds true for petitions to Congress. Sometimes even the regulators do not get it right.

D. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 61).



PLANNING DEPARTMENT

YUCCA MOUNTAIN REPOSITORY ASSESSMENT OFFICE

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Roger DeHart
Planning Director

Brad Mettam
Project Coordinator

December 22, 1992

Dr. Daniel S. Metlay
Secretary of Energy Advisory Board
1000 Independence Ave., SW, Room 7-B 198
Washington, DC 20585

Dear Dr. Metlay:

Thank you for the opportunity to comment on the Task Force's draft report. We are very pleased to see how responsive the Task Force has been to the concerns expressed by affected parties over the past eighteen months. In general, Inyo County endorses the findings and recommendations in the report and encourages DOE to adopt them.

At the December 11 meeting, we submitted partial comments on the report, and would like to supplement these with the following additional thoughts. First, in reviewing your definition of trust on p. 12, we felt that there was too much emphasis on the dependency of one partner on another. Trust must be based on a relationship among equals, often not acting in partnership but holding distinctly different views. It is possible for members of the public to have trust in an agency, even when they disagree with that agency's mission or goals, if they have confidence that the agency is:

- (1) committed to the safety and welfare of the public
- (2) honest and straightforward in dealing with the public
- (3) competent in carrying out its responsibilities
- (4) predictable and consistent in its policies

In short, people's trust is based on their ability to count on an agency's public responsibility, fidelity, competency and predictability.

A

Our second point is that trust in DOE's scientific work (p. 37) will be increased not only by bending over backwards to address and resolve plausible scientific arguments (like the Szymanski effect) but also make a candid acknowledgment that we do not know all that there is to know about siting nuclear waste repositories over 10,000 years. There are many uncertainties, not least of which is how to predict future human behaviors and technological capabilities over the life of the repository. It would be better for DOE to stop appearing totally assured about every outcome, to cease relying on expert judgments about events so far in the geo-hydrological and human future as to defy imagination, and to admit openly that we are embarking on the first-of-a-kind, experimental, uncertain, albeit necessary undertaking. It would be more conducive to trust if the DOE "culture" was characterized by a little more modesty about our current predictive capabilities, combined with a demonstration that some of the best minds in the nation are seeking solutions that are technically correct and publicly acceptable.

B

Third, we agree with your recommendations on p. 41 that a repository should be designed "where predictable performance substantially exceeds the standards set by regulators." It is also important for the public to perceive DOE as being willing to submit to the standards being developed by the regulators, rather than petitioning Congress to grant relief from requirements that are seen as too stringent (i.e. National Energy Policy Act of 1992, Section 801(a)(1)).

C

Finally, we urge the Task Force to be cautious in recommending that OCRWM "demonstrate its commitment to taking into account the interests of the citizens of Nevada" by offering terms and conditions (what is meant by this?) to Nye County, even if the State of Nevada is unwilling to accept them. Such action would be divisive, possibly illegal, and would fail to take account of other affected counties' legitimate interests. We in California would expect to be given the opportunity to participate in any agreements with the State of Nevada or its subordinate jurisdictions.

D

We believe this report to be a positive and well intentioned effort by the Department to address the issues of trust and confidence. Thank you once again for the opportunity to provide comments at this stage in the development of the Task Force's recommendations.

Sincerely,



Brad Mettam
Yucca Mountain Project Coordinator

BM/jc

Brad Mettam
Yucca Mountain Project Coordinator
Inyo County
Planning Department
Independence, California

3/18/93

- A. This language was revised. See page 20.
- B. The Task Force agrees; see revised language on page 25.
- C. At the full Secretary of Energy Advisory Board meeting in January 1993, former Secretary Watkins' commented about the importance of education in strengthening public trust and confidence. Although the Task Force appreciates his views, it does not believe that education is likely to make a substantial difference especially in the short run. The critical factor remains how the Department of Energy conducts its business.
- D. Additional observations about the Director's Forum are contained in footnote 45 on page 54.
- E. The Task Force agrees; see page 58.
- F. The Task Force agrees that honest self-assessment should become a norm of DOE's organizational culture. Providing rewards for it is not in conflict with that objective. In fact, rewarding it has the effect of legitimating it and, thus, making it easier to become accepted as an organizational norm. A parallel here is rewarding high quality, objective scientific and technical work.



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Roger DeHart
Planning Director

Brad Mettam
Project Coordinator

March 18, 1993

Dr. Daniel Metlay
Secretary of Energy Advisory Board, AC-1
1000 Independence Ave., SW
Washington, DC 20585

COMMENTS ON DRAFT FINAL REPORT OF THE SECRETARY OF ENERGY ADVISORY BOARD TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT

Dear Dr. Metlay:

Thank you for the opportunity to comment on the above referenced document. Inyo County has watched the work being done by the Department of Energy at Yucca Mountain since the preliminary studies were conducted in the early 1980's. In 1988, after the Nuclear Waste Policy Act was amended, Inyo County requested designation as an affected unit of local government, based on having an underground aquifer in common with Yucca Mountain. The DOE denied the request, and the County successfully appealed in the Ninth Circuit Court. Inyo County has actively participated as a jurisdiction with oversight authority since its designation as an affected unit of local government on May 29, 1991.

Inyo County is in a unique position to comment on the issue of trust and confidence. Following our request for affected county status, and especially after our appeal was filed in court, the County found it difficult to acquire public documents from the DOE. Assessments published by the DOE often ignored impacts that might occur just fourteen miles away from the Yucca Mountain site, across the state line in California. U.S. Geological Survey researchers informed Inyo County that they were being limited to Nevada for data collection. In frustration, the County began referring to the mythical "stateline fault" that restricted all potential impacts to the Nevada side of the border. Such a history of interaction has affected Inyo County's level of trust in DOE's management of the program.

The Task Force has been faced with a difficult charge: to examine and honestly report on the ability of the Department of Energy to engender trust and confidence -- from within. In its own dealings, the Task Force has seen how difficult it is to build trust & confidence, and how easy it is to damage. The report accurately reflects the views of the Task Force and the public comments offered at its meetings, however, in the implementation of the process, the Task Force has failed to carry out some of its own recommendations to the DOE. Witness, for example, the uproar over re-locating the first Las Vegas meeting to Oakland; the last minute availability of documents for review at the San Diego meeting; and the publication of a formal draft for public comment without incorporating the public comments on the Discussion Draft. These are minor failings in the overall undertaking, but they reflect the extreme delicacy of the process of recreating trust in an agency and the ease with which it can be undermined.

Inyo County had the opportunity to comment on an earlier draft of this document at the Task Force meeting in San Diego. We request that our written comments of December 22 be considered a part of our formal comments. In addition, we submit the following comments on the report:

COMMENTS

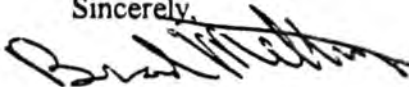
1. The **First Principles** described on page 14 contain a flaw, partly exacerbated by the use of the terms "public" and "stakeholders" synonymously. There may indeed need to be reciprocity of trust between some stakeholders and the DOE, but the public -- those individuals representing no one but themselves -- has no requirement to prove themselves "worthy" of trust. All levels of government, from the local county supervisor to the President and Congress of the United States, serve at the pleasure of this "public". A
2. The first paragraph on page 17 discusses the entities that, through law and tradition, are in a position to give independent advice on the technical aspects of the program. However it is not just the situs county, but each *affected unit of local government*, that has both the right and the obligation to provide the Secretary of Energy with advice and comments. B
3. The discussion on page 30 of OCRWM's "constricted view of what is required to restore" public trust and confidence makes the point that "the overwhelming focus remains on communicating better with interested parties". We suggest that there is a pervasive belief that "education" (i.e. a one-way downloading of information) is all that is needed to enhance public trust and confidence. This view has been often expressed by the DOE: in the *Draft Mission Plan Amendments*; as the theme of last year's DOE sponsored International High-level Radioactive Waste Conference; and even by Admiral Watkins in his endorsement of the Task Force report on January 8, 1993. The DOE will not regain public trust until it understands that it is the DOE's actions, not its public relations, that will most influence people's views C

of the Department's trustworthiness. The Department must accept that education, by itself, is not the answer -- that it is not a lack of understanding that has eroded the public's trust and confidence in the DOE, but perhaps the opposite.

4. **Finding #3** (page 30), concerning the consistency of OCRWM's approach to building public trust and confidence, should note that the Mission Plan Amendments have never been finalized, and that the initial Director's Forum was convened in an attempt to vet the *Early Site Suitability Evaluation Report*, a document that was developed without public interaction and that has never been formally accepted by OCRWM. This may have contributed to the dissatisfaction with that Forum. D
5. **Specific Measure #5** (page 38) suggests that expansion of the Department's peer review network to include experts from other countries. In choosing peer reviewers, the Department would be well served to allow input from stakeholders in the development of selection criteria. A classic example is the *Early Site Suitability Evaluation Report*, where the transportation expert was unaware of (and did not consider) the impact of risk perceptions on the high-level waste transportation system. E
6. Concerning the third bullet under **Design Basis** (page 40), I remain convinced that "rewarding" honest self-assessment sends the wrong institutional signal. Even after long discussion with Tom Isaacs, I still believe that a **reward** is for extraordinary conduct -- not for doing what should be considered the norm. This is what is wrong with the "whistle blower" approach in the current laws. Rewarding (and protecting) someone who sees something wrong and reports it condones by implication those who see something wrong and do nothing. The "institutional personality" of an organization is defined by just such subtle signals. F

Thank you for the opportunity to comment on this report. I would welcome discussion of any of these comments, and I look forward to the final version of this document.

Sincerely,



Brad Mettam

Loring Mills

No affiliation mentioned, but he was a vice president at the Edison Electric Institute

(His comments do not represent the views of the Edison Electric Institute.)

Stevensville, Maryland

5/25/93

In addition to suggestions about a number of specific areas where the draft might be improved, this comment develops a broader criticism that the Task Force will address at the start: does the fact that DOE is "buried within a much larger governance structure with many external programmatic constraints" make the task of strengthening public trust and confidence "essentially undoable?"

The logic of this argument appears to be the following. OCRWM is a small part of DOE, which in turn is a small part of the Executive Branch. Consequently, the program often discovers that the ingredients needed to get the job done, such as qualified personnel, adequate budgets, and strong management structures, are not available either because they are hard to come by in government generally or because other priorities, such as DOE's interest in protecting the Superconducting Super Collider or Congress' interest in lowering the deficit, take precedence. Because performance falters, trust and confidence wanes. By changing the governance structure, performance improvements can be secured, and trust and confidence will then grow.

Several questions immediately arise. What specific changes in governance structure should the Task Force recommend? Creating an independent federal agency? A quasi-governmental corporation? A private, utility-owned and operated consortium? Beyond the question of organization form, how what authorities would be exercised? Should the new OCRWM be able to renounce the contracts signed with utilities on the grounds that schedule pressures interfere with sound scientific studies? Should it be able to start its own site selection process on the grounds that Yucca Mountain is irretrievably tainted by crass politics? Should it be required to build a repository only at a site provided by a volunteer host state? Surely the answers will make a difference.

The Task Force raises these questions because it believes significant changes in the governance structure will only come about through an intensely political process in which each stakeholder tries to secure for itself something like the original terms of the salient NWPA bargain while requiring others to accept the terms that exist today. In short, the Task Force predicts that if any restructuring takes place -- a big "if" as the difficulties encountered just trying to take the Nuclear Waste Fund off budget indicate -- it will end looking very much like the institutional environment OCRWM now faces. Put another way, OCRWM's governance structure did not arise randomly; it is a reflection of specific political interests and values that will not disappear once the political battles begin. Like technical "fixes," organizational ones may be quite illusive.

This discussion leads naturally to the criticism of the Task Force's finding that there is no persuasive evidence that a change in organizational structure by itself will affect the

level of public trust and confidence. (Page 41.) The Task Force has modified and expanded its discussion of the basis for that finding. But a direct response to the comment is also called for.

Other findings and recommendations were alluded to that reached "overwhelming and obvious" conclusions diametrically opposed to those of the Task Force. While the group has great respect for the individuals involved, their proscriptions were largely based on informed opinion -- but on opinion nevertheless. Indeed, the major methodological device employed by the Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities was a straw poll. Organizational structure may make a difference, but because solid empirical evidence is lacking, the Task Force cannot presume so in providing its advice to the Secretary.

The Task Force turns now to the detailed comments and criticisms of its draft.

A. The Task Force disagrees with this comment. While proper implementation will require ways of measuring results, the recommendations are specific enough to serve as a point of departure. While the panel is pleased to know that "all within DOE" can voice support for the general recommendations," it has heard little enthusiasm for those suggestions that genuinely empower large number of stakeholders.

B. The Task Force has modified and expanded its discussion of the current governance structure. See pages 22-27 and 33-35 in particular.

C. The Task Force and its staff conducted a number of case studies. The general lessons learned from them were extracted and incorporated into the analysis contained in the Draft Report and Proposed Final Version. Additional information and a more detailed discussion of those cases will be provided in Part II of this document.

D. That Task Force has substantially revised its discussion of commitments and schedules. See pages 20, 24, 27, and 53-54.

E. The Task Force agrees that it places considerable importance on the processes that DOE uses to interact with a range of stakeholders. But it also places considerable importance on outputs such as quality scientific and technical work as well as the ability to meet commitments.

F. Modifications have been made to this recommendation. See page 56.

G. The following situation has arise when stakeholders were not involved in all phases of the decision-making process. Schedules have slipped by roughly two years for every year that has passed; cost estimates for characterizing Yucca Mountain have increased dramatically; the civilian program is viewed as untrustworthy by virtually all that do business with it. The Task Force believes that broad stakeholder involvement is not likely to make matters much worse.

H. Determining who is a "real expert" is not simple, as the Supreme Court recently discovered. The intent of the recommendation, which has been modified (see page 58) from the draft, is that DOE should broaden the set of reviewers it uses and provide stakeholders with opportunities to guide the selection.

I. The Task Force agrees; see page 57.

J. See the response to "C" above.

K. Unlike the present situation, the Task Force believes that no stakeholder occupies an intrinsically "superior position." In particular, the panel is not prepared to recommend that any stakeholder be given either a formal or a de facto veto over programmatic choices.

L Language has been modified. See page 59.

M. The Task Force disagrees. There is a consensus among those who study organizations from which a high degree of reliability is demanded that overlapping self-regulatory processes are quite important. This is especially the case when novel activities are being undertaken.

N. Changes have been made to the recommendation. See page 61.

*Loring E. Mills
Goose Point, Kent Island
132 Eareckson Lane
Stevensville, Maryland 21666
410/643-1244*

May 25, 1993

Dr. Daniel Metlay
Task Force Director
Secretary of Energy Advisory Board
Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

Subject: Draft Final Report Of The Secretary Of Energy Advisory Board
Task Force On Radioactive Waste Management

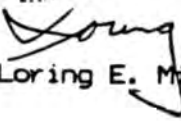
Dear Dr. Metlay:

Enclosed are comments on the above Report. No attempt was made to be all inclusive and the comments touch on only a few of the items of the Report.

Basically, the Report is a significant contribution toward achieving improvements in the public trust and confidence for the DOE waste management program. However, there is considerable doubt that the desired culture change called for with the extensive recommendations can or will be achieved within the existing governance and management structure. The needed changes are so profound that a major shake up is required for the system to permit them to be implemented.

As we have discussed, there are a number of improvements that appear appropriate as the Draft Report is finalized. Hopefully, some of these comments will assist in that task.

Sincerely,


Loring E. Mills

General Comments
by Loring E. Mills

On Draft Final Report Of The
Secretary Of Energy Advisory Board
Task Force On Radioactive Waste Management
December, 1992

The importance of seeking improvement in public trust and confidence (PT&C) cannot be overstated. The Draft Final Report does provide insight, findings and several recommendations that should assist in achieving improvements in PT&C. The overall Department of Energy (DOE), and specifically the radioactive waste management programs fall within the Federal Government structure, which appears by definition to possess a low level of PT&C with most publics. Congress also has a very low PT&C. The goal should be to seek and implement continual improvement in PT&C, not to expect full achievement—which probable is not possible within the inherent constraints of the established legal governance structure. However, for the DORWM program to achieve reasonable PT&C, it needs to be given the proper autonomy that entails established authority and responsibility with full accountability for its actions. Being buried within a much larger governance structure with many external programmatic constraints makes the task essentially undoable.

Basically, most publics do not expect nor demand that PT&C be achieved within any one specific political segment of the Federal Government, whether Congress or DOE. While there is considerable PT&C, and envy around the world, for the overall democratic structure of the United States, including the inherent checks and balances, there is very little PT&C for individual segments. Never-the-less, with the apparent low PT&C for the DOE, it is very important to seek improvements.

The Draft Final Report (Report) does provide a major contribution toward improvements in PT&C. However, the very general recommendations in the Report should be modified to provide more specific, tangible and measurable recommendations. All within DOE can voice support for the general recommendations, but no one will be able to effectively measure the results. | A

Perhaps the most telling observation is provided in the first paragraph of "The Meaning of Public Trust & Confidence" on page 10. Whatever measure is used, it will be viewed differently by various factions and stakeholders. How could one know when PT&C is achieved? Certainly, winning a particular election by a simple majority does not assure continued PT&C. And, the same person performing similar actions may achieve PT&C one year and not the next. Nor is it possible to achieve PT&C equally among publics that have hard and fast opposing positions by finding some middle ground that no one likes. Thus, PT&C may be measured by the degree of acceptability in plans, promises and actions. As pointed out on page 10, "honesty and believability", "acting in the public's best interest", "keeping commitments", and "technical competence" are the predominate factors that determine PT&C. These factors are measurable for the most part and should be kept in mind when drafting the recommendations.

Missing from the Report, is any real discussion on the inherent legal constraints under which the DOE is required to operate, the constraints on the DCRWM within DOE and the overall Federal governance structure that controls the permissible actions within DOE and DCRWM. While these constraints must not be used as an excuse for not achieving PT&C, they must be recognized to determine whether the recommendations can be legally and practically implemented. The governance structure is mentioned briefly in five sentences on page 1. The management structure is not mentioned at all. Significant more discussion is needed on both the governance and management structure to define those areas where the recommendations can be effective. Also, specific case references would be helpful in describing organizations and programs that have achieved a reasonable level of PT&C. Without specific examples and discussion of both successful and unsuccessful programs, the recommendations appear to be hollow "do good" things. One important factor of measuring PT&C, "keeping commitments", such as reasonable schedules, does not seem to be taken into account with most of the recommendations. In fact, many of the general recommendations appear to fly in the face of this important factor. Establishing reasonable and doable interim commitments, including schedules, and fulfilling these commitments appears missing from the recommendations and are vital to achieve PT&C.

Another general comment about the recommendations is the overemphasis on process and involvement, while being silent on commitments, goals, actions and results. A great process that leads off in a general direction may be nice, but to achieve a lasting PT&C, action, progress and results are vital.

The Findings appear reasonable for the most part. However, the one on page 27 that summarily dispenses with the organizational structure is unsupportable; number 1 - "There is no persuasive evidence...".

This finding appears to be in stark contrast with other findings where substantial culture changes are needed. Clearly, the other findings and recommendations tie directly to and vividly point out the weakness of the present organization and management structure. While many incremental improvements are suggested, the overriding governance constraints forced upon the DCRWM task, as a small item within the overall DOE program, is obvious and overwhelming. Others have reviewed and recommended a different governance structure for the DCRWM task and reasonable PT&C will not and can not be achieved for the civilian waste management task under the present governance structure. To implement the recommendations and achieve reasonable PT&C, a different governance structure, with strong management capability, that is open and responsible to the public is essential. The basic information gathered for and the discussions in this Report certainly supports such a need.

page 3

Specific Comments on the Recommendations:

Pg 37 - 2nd bullet under 1 - "Release any DOE-generated material..."

Since the amount of material generated by the DCRWM program is very large and it goes through many, many stages of preparation, review and finalization, it appears impractical to implement this recommendation. At some step in the process of material preparation, all of it should be made accessible to those who take the effort to seek and search some limited use area. Some control is necessary to minimize attribution until finalized. However, the word "release" in the recommendation implies some form of active dissemination. With several thousand persons collecting, analyzing and generating material by and for DOE, reasonable control and access must be defined before a "release any" principle could be implemented.

F

Pg 38 - 1st bullet under 4 - "Develop initiatives to ensure..."

Having a broad range of stakeholders involved in the decision making process is noble but uncontrollable. Decision makers are hired to manage the program and making decisions is a difficult task. Clearly, a decision means a choice between options and all publics will not be satisfied with any specific decision. Obtaining stakeholder input as guidance for making decisions is important. Having stakeholders actually involved in the process throughout all phases is a means to prevent decisions from being made. Clarification is needed on this recommendation to make it workable.

G

Pg 38 - 1st bullet under 5 - "Expand to the maximum extent possible..."

There is no practical limit for such an open ended recommendation—how do you define maximum? Also, how does a person become qualified to be an expert to participate in a legitimate peer review step? One of the major shortfalls of the present process, that clearly adversely impacts PT&C on the program, is that non-qualified persons assume and are granted peer review access, and become very vocal to emphasize their hidden agenda while in fact they are not a real expert on the area being reviewed. A screening test is essential to identify qualified persons that are allowed to serve as legitimate peer reviewers.

H

Pg 39 - 2nd bullet under 1 - "Require full-time local residence..."

This is admirable and should be practiced to a much greater extent than present. However, it appears impractical to have all DOE persons working on the program to reside in Nevada, much less the NRC reviewers and technical experts working in various expert centers around the country. Some qualification appears needed for this recommendation.

I

Pg 39 - 1st bullet under 2 - "Make good faith efforts..."

A time schedule is one element of any reasonable commitment. Thus, a delay in a schedule is not achieving a commitment. Reasonable and achievable commitments are essential, including time periods, and meeting the commitments within the planned time periods is required to achieve PT&C.

J

page 4

Pg 40 - 2nd bullet under 3 - "Permit State, local and tribal authorities..."

These, as well as all other, stakeholders should have an opportunity to be heard before decisions are finalized. The implication of this recommendation is that the specific stakeholders mentioned somehow have a superior position to others or to program management on this item. In fact, if the State of Nevada had "a voice in determining the rate" and movement of waste to Nevada, none would ever move. A reasonably balanced decision, with recognition of need, must be permitted. | k

Pg 41 - 2nd bullet under 3 - "Increase organizational redundancy..."

Controlled redundancy is needed to assure that critical activities important to safety are performed properly. The existing program redundancy appears to be excessive and abusive. Increasing such redundancy is unlikely to achieve greater safety or improve PT&C. Proper, reasonable and effective redundancy should be defined and implemented— not arbitrarily increased. | L

Pg 42 - 3rd bullet under 3 - "Institute overlapping..."

This is inappropriate and can be very detrimental to good practices of responsibility and authority. There is already excessive overlap and redundancy. Such an action would result in evermore conflict and forever adversely impact PT&C. | M

Pg 43 - 4th bullet under 2 - "Leave no room for a mistaken impression..."

This is patently incorrect. The program of a repository for waste disposal is not experimental—it is for real and must be done with care. The scientific study to determine whether Yucca Mountain is a satisfactory site for a long-term geologic repository is of an exploratory nature, but it is not experimental. Any suggestion that the Congressional mandate approach of deep underground geologic disposal as the appropriate means to dispose of high-level radioactive waste is only an experiment is a disingenuous desire of those publics who seek not to have a direction for this important national challenge. Finding a satisfactory site and building a repository is an important national task to be performed, not an experiment. | N

Pg 43 - 1st bullet under 3 - "Support research and development in alternative technological approaches..."

Perhaps some additional limited national resources (not OCRWM program funds) should be allocated for alternative approaches to supplement the decades of prior consideration of alternatives. But, alternative studies can go on forever and proceeding down such a path implies that geologic disposal is not appropriate. Even the most avid anti-nuclear publics support deep geologic disposal—they are simply disenchanted with the process as implemented. Thus, the program focus must continue to be down the path of geologic disposal to achieve any sort of overall PT&C.

* * * * *

Marla Painter
Executive Director
The Rural Alliance for Military Accountability
Carson City, Nevada

3/10/93

A. Although the Task Force discussed Safety Review Boards in great detail at its meeting in San Diego, it did not reach agreement on how they might best operate.

B. Public funding of citizen groups has been debated since at least the mid-1970s. The advantages and disadvantages of doing so are fairly well understood. The Task Force recognizes that financial assistance can facilitate the involvement of groups in the various processes it has recommended. It also realizes that it would likely take an act of Congress to authorize the Department to expend those funds. Historically the legislature has been quite reluctant to do so.

C. Changes have been made throughout this document, not only to the recommendation cited in the comment, to recognize the important role played by Indian tribes.

D. Revisions have been made to clarify the intent of this suggestion. See pages 60-61.

E. The Task Force believes that the only defensible position the Department can take with respect to Yucca Mountain is to conduct exploratory studies to make a judgment on whether the data will support an application for a license to construct a repository at the site. See the revision made on page 61.

F. The Task Force feels it has presented a set of recommendations, whose adoption would, at the very least, make the Department of Energy's more worthy of public trust and confidence. For the reasons laid out on pages 41-42, it does not believe that "fundamental structural reforms" are the answer to the challenges DOE faces in this area. Rather the panel calls for fundamental changes in behavior. Although the Task Force realizes that progress in this area will be difficult, it does not regard the problems as inherently "unfixable."



THE RURAL ALLIANCE FOR MILITARY ACCOUNTABILITY

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March 10, 1993

Dr. Daniel Metlay
Designated Federal Officer
Secretary of Energy Advisory Board, AC-1
1000 Independence Ave., SW
Washington, DC 20585

Dear Dr. Metlay,

On behalf of the Rural Alliance for Military Accountability, I am submitting the following comments on the Draft Task Force Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. RAMA is an informal working alliance of rural organizations and individuals in the United States who are adversely affected by the U. S. military, including the Department of Energy.

It is remarkable that this task force was formed to study the public trust and confidence issue, one of the many problems facing the Department of Energy (DOE) in the management of nuclear waste. The report's most striking finding is that no one - not even nuclear industry representatives - trusts the DOE. We certainly agree with that conclusion.

In the "Interactions with External Parties" section, we have several comments.

The idea of "safety review boards" has merit and should be discussed in detail rather than mentioned in passing. The selection, composition and powers of such boards would be crucial in determining whether they could be part of the solution or just exacerbate the problem.

A

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There is also mention of working with citizens groups. The task force should consider, acknowledge and recommend that unlike most other sectors mentions, citizens groups are not funded to participate. Funding could increase the perception that they are being manipulated by the DOE; however, without funding, full participation may not be possible.

B

Another troubling comment concerns the infrequent mention of Indian tribes. On page 37, 6, no mention is made of empowering Indian tribes although under current scenarios they could be front runners to cope with clean-up and MRS waste.

C

[On page 40, #1, bullet 2, what does this mean? What is "appropriate conduct" for forced siting?] Under #2, the language of bullet # 4 most assuredly does leave room for the impression that activities at Yucca Mountain are other than in the experimental mode. ~~phase of the program.~~]

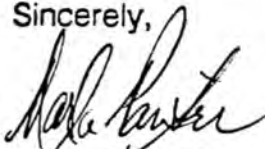
D/E

The major flaw in this report is that no innovative, courageous solutions regarding fundamental structural reform are recommended. If the trust and confidence problem is not fixable, then this report should state that, and make recommendations regarding the future management of a high level waste repository.

F

RAMA appreciates the opportunity to comment on the draft document. We look forward to receiving a copy of the final report, and hope that the final document will be strengthened to include strong recommendations on fundamental structural reform of DOE.

Sincerely,



Marla Painter
Executive Director

Dick Sclove
Loka Institute
Amherst, Massachusetts

2/10/93

A. The Task Force does not wish to convey the impression that the "technical filter" is somehow more important than the "non-technical" in the site selection process. Rather this metaphor was adopted as a means of suggesting that there are a variety of appropriate ways to choose sites but that they all require the proper balancing of technical and institutional variables in a way that is not biased or arbitrary. See the revised language on pages 4-5.

B. The Task Force does not use the term "public acceptance" except to divorce explicitly from it the idea of public trust and confidence. See footnote 23 on page 13.

C. The Task Force has no data that speak to the question of how much importance various segments of the public attach to the well-being of future generations. At its meetings, very few of the representatives of stakeholders addressed this concern in anything more than a passing fashion.

D. Undoubtedly opposition to the expanded use of the nuclear power option motivates some segments of the public to oppose the development and deployment of a radioactive waste management system. (Opposition to nuclear weapons has a similar effect.) Although the Task Force has often heard representatives of stakeholders say that they could never trust an organization that promotes nuclear power or manufactures nuclear weapons, it believes that even profound disagreements on goals does not preclude the establishment of trust. Furthermore, from a tactical point of view, the panel feels the strengthening trustworthiness in managing nuclear wastes is an issue that is best addressed on its own.

E. In any large organization there are always likely to be individuals who have not adjusted well to change or whose behavior is no longer appropriate to the agency's contemporary mission. By introducing and structuring new incentives (see pages 55 and 59-60) within DOE, the Task Force hopes the number of such individuals will be low.

10 Feb. 1993

To: Prof. Todd R. LaPorte, Dept. of Political Science, U.C. Berkeley
Fax: (510) 642-9515

From: Dick Sclove, The Loka Institute, P.O. Box 355, Amherst, MA 01004-0355
Tel. (413) 253-2828 (w), (413) 256-8727 (h)
e-mail: resclove@amherst.edu

Dear Todd,

Thanks for sending me a copy of your "trust and confidence" draft report to the Dept. of Energy. I enjoyed reading it, and I think it's a fine document. I have no serious criticism or recommendations. But since you asked, here are a few minor comments.

1. P. 4 implicitly distinguishes sharply between "technical" and "non-technical" bases for accepting a disposal location or method. I know, of course, what you mean, but I also think that lay publics who become involved on this issue will instinctively--and with some reason--find the very distinction a bit patronizing and mistrust generating. In effect, to uphold the distinction tends to sound like one is saying: (a) there are the hard, real (i.e., "technical") bases on which experts with objective knowledge can distinguish good locations from bad ones; and (b) there are also various irrational public fears and political realities ("non-technical" factors) which intrude and keep those fine experts from getting on with the business of picking the sites they themselves know make best technical sense. I'm sure your task force and DOE folks would sincerely object that you mean nothing of the kind by the distinction. Yet I would recommend not using it at all, or--if it is unavoidable--at least explicitly defining it in a way that it cannot carry such patronizing connotations.

2. Similarly, I fear that the very terms that are central to the report--"public trust and confidence"--may inadvertently harbor some similar connotations. The term--and the concepts and practices that go with it--are still not far enough removed from the discredited idea of "public acceptance." My guess is that those publics most mistrustful of DOE don't want to hear about what DOE can do to win their renewed trust. Rather, they want to know what DOE is going to do to empower them to be full partners in finding acceptable solutions. (Now of course, many of the report's recommendations make that same point; but I fear that doing so under the rubric of "public confidence building" can backfire. It still sounds too much like paternalistic P.R.)

3. Are there any precedents or analogs in U.S. history or abroad in dealing with comparably scary and complex public concerns from which one can learn? E.g., the old Canadian MacKenzie Valley Pipeline Inquiry is one model of a non-cooptive participatory decision-making process that worked; so, maybe, is the current Community Health Decisions movement (described by Bruce Jennings in the Hastings Center Report in 1988 and 1990). Your report does briefly (p. 45) draw the analogy of U.S. business concern with "quality." It's a good analogy insofar as defining "quality" is about as hard as defining an acceptable standard for "solving" the radwaste problem, and there were related problems of overcoming consumer mistrust. But there are also significant differences. More analogies--if they are out there to be found--would be good. (One less optimistic analogy that occurred to me is U.S. business attempts to incorporate notions of "participative management" or quality circles, which have generally done little to persuade organized labor that this is not just authority, production speed-up, or union-busting by other names.)

4. Did you study how much of environmental or lay public opposition to DOE performance on radwaste results from an authentic concern that the well-being of distant generations is not really being adequately taken into account? If so, I'd wonder about Christopher Stone-style proxy representation of future generations within decision-making processes as one means for assuaging some such concern.

| C

5. Did you also consider how much of environmental or other lay public concern about radwaste is part of a broader opposition to nuclear power generally, such that people who are genuinely concerned about radwaste may also see it as a strategic opening for opposing expansion of the entire nuclear or plutonium economy? (E.g., I wonder, hypothetically, if there were a formal moratorium on licensing any new civilian nuclear plants, if it might be easier to get some participants to focus more seriously on "OK, we really do have radwaste here that we have to do something responsible with. Let's get on with it, because leaving it moldering at ground level is doing nobody any good.")

| D

6. The report says lots of good things about continuing to transform DOE's culture. How about saying outright that some of the recalcitrant Old Guard who are doubtless non-reeducable absolutely need to be put out to pasture, or at least transferred somewhere where they can do no further harm.

| E

7. Technically speaking, I've wondered for two decades now (I have a letter mentioning the issue in the Oct. 1977 issue of Scientific American) whether the move to a permanent geologic repository isn't premature. Has enough thought been given to retrievable, interim storage deep underground, which would buy time for working on permanent disposal at a more leisurely, responsible (and therefore, yes, "trust-building") pace?

Again, these are all small issues. The report is very good (indeed, I'd appreciate seeing Parts 2 & 3 when they become available).

Best,

Dick

P.S. We've moved around the corner to a new house; our new home street address is 20 McClellan St., Amherst, MA 01002.

Fawn Shillinglaw
Affiliation not mentioned
Appleton, Wisconsin

3/1/93

The Task Force appreciates the effort made in providing these comments. They articulate important concerns and viewpoints, and the panel takes them quite seriously. It will, however, limit its responses to suggestions for improving the content and logic of the Draft Report.

A. Undoubtedly opposition to the expanded use of the nuclear power option motivates some segments of the public to oppose the development and deployment of a radioactive waste management system. (Opposition to nuclear weapons has a similar effect.) Although the Task Force has often heard representatives of stakeholders say that they could never trust an organization that promotes nuclear power or manufactures nuclear weapons, it believes that even profound disagreements on goals does not preclude the establishment of trust. Furthermore, from a tactical point of view, the panel feels the strengthening trustworthiness in managing nuclear wastes is an issue that is best addressed on its own.

B. The Task Force agrees that it is often difficult to evoke public trust and confidence when safety can only be demonstrated by a rather abstract and complex set of long-term safety predictions. It, therefore, attaches considerable importance to the Department maintaining a highly credible scientific capability (see pages 20 and 58). It allows believes that DOE should pay special attention to the public trust and confidence implications of the its repository design, development, and certification activities (see page 61).

C. The phrase "reasonable assurance" has a particular legal connotation. The Task Force has made some recommendations that it believes will minimize the likelihood that current and near-term choices will prove to be mistaken. See, for example, pages 58 and 61.

D. The Task Force used the word "may" because it was not confident that it could accurately anticipate how future events will unfold.

E. How rewards would be provided for discovering error is likely to vary considerably across the range of waste management activities the Department conducts. The Task

Force understands that such rewards have been used effectively in many organizations from which a degree of reliability is demanded.

Comments on Draft Final Report of the Secretary of Energy Advisory
Board Task Force on Radioactive Waste Management

Dear Dr. Metlay,

I have just finished reading your report and am impressed with the frankness in which it observes the problem. I always find such reports tedious and long and not really direct. As a member of the public truly interested in solving the waste problem, I think you have to see clearly why the program does not have public trust and confidence and why you won't gain this until the whole energy program is changed.

To expect the public to ever believe that radioactive waste is safe near them just isn't going to happen. People already are very knowledgeable about effects of radioactive. They have heard of Hiroshima and Nagasaki, Chernobyl and Three Mile Island. They have seen "On the Beach" and "China Syndrome". They have been through the Cuban Missile crises and threat of nuclear war. They know about the tanks at Hanford and the Spills and contamination all over the country. Nuclear Weapons and Nuclear plants have been steeped in secrecy - grounds and fences and danger signs. The public knows too much about nuclear issues - you can't "undo" that. Health dangers and costs of clean-up and decommissioning are becoming clear. The problem just keeps getting worse. Yet, nobody talks about ending the creation of more and more nuclear waste. The DOE and NRC don't seem to understand that the public is promoting conservation and renewable.

We ain't dumb out here. Nobody wants nuclear plants, dry cash storage, and MRS, a repository, a weapons plant etc. anywhere near them or their kids or their grandchildren. Do you? The only way you will really gain public trust and confidence would be to say you are going to phase out nuclear power, phase out nuclear weapons, and set an example for the rest of the world that these two things were created by us and that it was a mistake and that now we want to admit it and stop it. To say "I'm sorry, I was wrong" is one of the hardest things to do. Yet, once said, solving the problem always becomes easier and trust and confidence are enhanced. If DOE was to say we are going to eliminate as much creation of radioactive waste as possible in the future, and do the best to store what we have created already because we have to do something with it (it's already there) - then I for one would listen. | A

But for the past two years, the more I've read on this issue, the less I trust the system. I didn't even know we had any nuclear plants nearby till a few years ago when I heard they wanted to put dry casks near one of my favorite State park on the shore of Lake Michigan. Then I found they wanted to also put such casks on an island in the Mississippi. Nuclear plants on our nation's waterways is danger enough, now I find that giant fuel has been piling up at these plants ever since the plants opened for business. This was not the original plant the public was given. The plant changed and now we have pools filled to stress levels - assemblies full of crud aging with time. Now we are told once again, there is no place for it to be removed to - no MRS, no repository, so they want to pole it in the plants backyard. When do we say "no more" - "enough of this"?? - the plan wasn't followed - the fuel was never removed from the pools - we want no more of this. People are opposing dry cash all over the country at plant sites because they have no confidence they will ever be removed. Why should they? The

spent fuel never has been removed before, and there is no place for it to go. Yet, new reactors are proposed to create more waste. This makes no sense to us.

Yet, the opposition of dry cask does not mean the public advocates an MRS or a repository either. The "dump it in Nevada" idea doesn't have a lot of advocates because the public realized, as more waste continues to be created, the next thing will be a second and third etc. repository and we may hear "dump it in Wisconsin" or "dump it in Minnesota" - or put an MRS in Arizona or New Mexico. The minute you try to remove it from the sites of origin - weapons or commercial plants - people holler. They don't want it transported through their communities and don't want it stored or disposed there either. They know it is dangerous.

If you was to say, "look, we are closing these places. We are going to stop creating the stuff. We have to solve the problem of what we already created though" - I think people would listen. My own personal solution is to close the plants and get the fuel in a safer above ground site in each State of creation than along a waterway. Then fence it in, keep it constantly monitored in the safest casks created and change them every 20 years as necessary. This will be a monument in each State that made the "Faustian" bargain to use nuclear power. Why should any State that has never used nuclear power have to store the waste? To put this stuff in a hole in the ground and base its safety on predictions for the future certainly doesn't promote trust and confidence. Those really concerned realize their State could easily be the next "Nevada".

I think the fact that the world is watching and waiting for us to site the first underground repository is significant. We are once again the leaders here as we were in creating the bomb and then hoping to find peaceful uses for nuclear energy. All we did was open Pandora's Box - Oppenheimer knew that - so did a lot of other scientists. It's time those in the weapons labs start taking responsibility for what they create. We don't just have to keep pouring money down the nuclear drain. In the end it may not be the bombs that do us in - but the radioactive waste instead. This is a world situation - not just dry casks at a nuclear plant in Wisconsin or a repository in Nevada. And time is running out.

All these plans for a repository or an MRS will never be accepted by the public and it's time that is accepted as reality. The waste has not left the plants and it won't till they close. It's time to do that now. That is the only way to gain public trust and confidence. We are concerned about what we are paying as rate payers and tax payers to bail out the nuclear industry time after time. We are concerned about cancer that all our parents are getting. Any body you talk to has somebody in the family who has had or has cancer. Don't you have one or more in your family? Why? Do we really know? Why has the radiation rate to the public been cut to 1/5 in 1993 of what it was? Why hasn't this been changed even before? Because the BEIR report realized the danger that weren't realized before. Why do we wear shields at the dentist to get our X-rays? Why are we checking for radon in our homes? We now know that a cumulative dose from bomb testing, X-rays, natural background radiative and radon, plane flights, nuclear plants and waste storage, contaminated weapons sites, etc. that each of us gets in our life is having an effect. It's time to "just say no" to any additions by creating more waste and exposing people and workers and the environment to it.

A break here - I wrote this last night and this morning I realize I'm tedious too - but I do think what I've already said reflects what the public feels. Now I'll try to be more precise and go over your report:

Report:

- Page 4: The graph and projection dates tell all about a repository. I don't think one will ever be sited and it shouldn't be. The public will not accept one, especially knowing a 2nd, 3rd, etc. will also be needed.
- Page 5: "six billion to evaluate" the site - that builds public confidence in keeping the nuclear program going? Last paragraph - reference to "yesterdays" understanding about biological effects of radioactive material and "yesterday's" sensibility about the fragility of the environment. The public has learned to see the need to look far in the future in this waste plan - to project ourselves forward and look back to today as the futures "yesterday". This phase repeated over and over by the DOE and NRC in documents - "reasonable assurance" - doesn't assure us that we won't look back and see a repository as another big mistake. The potential for contamination when this stuff is buried and out of sight is too great. It should be kept above ground, in sight, and constantly monitored and safeguarded. | C
- Page 6: "EM program takes \$1 out of every \$4 appropriated to DOE" - "3700 waste sites" - with the economic and health care crises today in our country, there is no way this program can regain public confidence until the plants are closed.
- Page 9: "Whether a disposal facility is performing as anticipated may be hard to ascertain". Very true - impossible in fact to predict "forever". We have the future of our great grandchildren in our hands here. Are we going to stay on the path we've taken and produce more and more nuclear waste, or take a new road?
- Page 12: - view of industries - their power is overwhelming in creating waste and contaminating weapons and plant sites, but now they want DOE to "fix" their problem and yell that they want the waste "taken away" from the plants and the mess at weapons sites cleaned up - like a kid that spills his cereal and expects mom to take care of it. It's time the industry - the big corporations have some ethics and concern for the public and the environment. This salesman attitude about how "cheap", "clean" and "safe" nuclear power is - doesn't go over with the public. We ain't unaware of radioactive waste. To point the finger of pollution at fossil fuels in full page advertisements and cover up the waste problem nuclear has created is no longer possible.

Page 16: "generation benefiting from nuclear power should have the responsibility to solve the problem of waste left behind". Very true - that's why when we see Nevada saying "put it in dry cask at the plants to give us more time" and then the plants say "dry cask will be temporary" - we of the public know that the spent fuel will stay at the plant sites just as it always has since they opened. Waste tends to stay at it's point of origin. Each State should take care of what it created. Once each State realizes that they have to keep it forever, they will consider stopping more creation. They might as well accept that now.

Page 17: "the level of confidence accorded NRC does not appear to be appreciably higher than that of DOE". True! the NRC licenses casks and says they have nothing to do with the standardization or integration of the whole program. They say that is DOE's job. We of the public see that the DOE and NRC need to work together. If the NRC gives a certificate of compliance to casks such as the VSC-24 to be used at our Pt. Beach Plant in Wisconsin and at Palisades Plant in Michigan - for storage only - why should we of the public trust that it will fit in with a future transport system? The DOE now finally says it will work on a "universal" cask for storage, transport, and disposal - but there is no place to transport it to and no place to dispose it at. We have the cart before the horse. They said before that a cask for disposal couldn't be designed until the site requirements were determined. Virginia power, which has cask demonstrations at Surrey is working on a cask design to fit the repository "ramp" system now. They propose a thick walled cask with overpacks as a "universal" cask for use at plant sites, to an MRS, and to the repository. A lot of the success of the whole waste program depends on the design of this final container. But without knowing the final criteria, GAO recommends holding off on designing the cask. On the other hand, the plants, like ours in Wisconsin, are going to get casks that probably won't fit in the system. We can see that if there is a lack of standardization and integration as there now is, casks, worker exposure and the public health and costs will be risked because of redundancy in the system. A concrete cask at the plant, an stainless steel and new from shield overpack for transport, a concrete cask at an MRS, a final overpack to resist corrosion in the repository - is this really a "universal" cask or four overpacks at great cost and waste? Also to say a thick walled inner canister for use inside the overpacks throughout the system is going to depend on timing. If you leave these canister at the plants for over 20 - 40 years, will they be allowed on the roads without opening the welds and checking the contents to see what has happened to the rods and gas inside? Casks have only been stored for two decades anywhere. We don't know what will be going on inside those casks. How long will they sit at aging nuclear plants before they go on the road? That is the question. The studies I've seen on spent fuel in an inert atmosphere refer to 40 years predictions, yet the casks are supposed to be "all right" stored at the plants for up to 140 years. The criteria for 20 years checks on these new cask are not clear.

Right now the NRC has given Consumers Power on exemption to build the new designed, never physically tested VSC-24 cask for Palisades. The code does not allow fabrication before NRC approval. Yet the first time a cask is added to the new generic ruling, the NRC breaks the code. They have bowed to industry pressure and those casks sit there on the pad ready for loading before a certificate has been given. The public looks at the situation as an example of the whole waste system. Industry directs the waste program and the public is ignored. Who is going to make them discard these already built casks if the design has faults? This is wrong. We in the midwest at Prairie Island in Minnesota, Palisades in Michigan, and Pt. Beach in Wisconsin have great faith in a safe energy program of conservation and renewables. The Union of Concerned Scientists has a huge report on midwest renewables. We see dry cask storage as a symptom of the whole waste system. All it does is allow more waste to be created. It does nothing to solve the problem of disposal.

Page 18: "may confirm the fears of those who believe that DOE will circumvent the regulatory process if necessary to get a repository at Yucca Mt." Of course this is true and we in Wisconsin see this type of heavy-handed sitting as a prediction of what can happen if a second repository were to be sited in our State. More than one repository will be needed in the future. Where?

Page 20: "EM program - \$200 billion in 25 - 30 years" - and we have problems in health care, education, etc. etc. - this total unbalance in priorities is very clear to the public - when decommissioning of plant's costs become a reality - another big surprise is in store!

"It is widely acknowledged that the data from which are derived exposure and contamination standards is sufficiently uncertain that they might not be an adequate reflection of environmental and health risks". You are so right in stating this - considering the radiation dose acceptable in now five times less than what was previously allowed tells us a lot. We know now more about the dangers to the public than we did previously. If radiative is bad for public health, why allow any addition to what they are already exposed to? We need an answer to this question. When do we

Page 26: see "dancing with a 900-pound gorilla" for what it really is?

Page 27: The tanks at Hanford loom out there as the best example. We can't just put this stuff in a container and hope for "reasonable assurance" that it won't be a problem in the future.

Page 29: On this page you really state the issue when you say "the ethical, technical, political, and economic bargains discussed above have proven to be contradictory and almost irreconcilable" and then - "Lacking a core mission may increase pressure to temporary and to postpone finding a

solution until later generations and so it goes". You say here "and so it goes" as a rather defeating and depressing and to the paragraph. You are so right. "And so it goes" as if it just keeps fastening itself to the explosion point by it's own inertia. Can we stop it? Will we? Do we have the courage to see the waste problem for what it is - unsolvable. We created the weapons plants, the bombs, and the energy plants. We set the example for the world. Isn't it time to say we made a big mistake. Do scientists ever realize what they do in such creations. Just because the technology exists for things, doesn't mean we have to do them. It's time we look at how our civilization depends on the defense industry and suffers from the products and waste it creates. A safe energy policy of conservation and renewable - wind, sun, goatherd co-generation etc. is out of there, yet we provide minimal funding for research and development in this fate future and pour billions into bailing out the nuclear industry. Where is their basis for public trust and confidence in such a program?

Page 31: "Public comments were requested in each case". "The comments received had little effect." "The underlying structure of the choice was rarely changed." - Is that going to be also true of this report? There is an honest undertone in this report of the people who put it together - almost one of despair. As if to say, well, they asked us to do this, and we did, but we don't really expect anything to result from it. They will just do as they have and say then did their best to evaluate how to gain public trust and confidence, but it just didn't work. Will this really be any effort to change - any effort to evaluate the whole program and what causes it?

Number 5 you stated here that decisions have been made on the basis of their impact on the economic health of the nuclear industry, the ease in gaining a NRC license, and performance of a repository - but not on public trust and confidence. That is true. The impact on the nuclear industry comes first, the public last or not at all. This is wrong. We don't subsidize the grocers, the bakers, the shoemakers etc. - why do we have to pay as rate payers and tax payers for nuclear energy and waste?

Page 33 & 34: You stated they may find themselves "plague with by insufficient resources, slipped schedules, and overly optimistic projections of technologist advances. Pressures may build to find solutions as inexpensively and expeditiously as possible." You use the word "may" in both of those references. I think the word "are" is more realistic. We "are" not in that position as far as nuclear waste.

Page 42: "Reward the discovery of error" how would this be done? People are afraid to report problems in that they will loose their job. How would you set up independent overseer? Who checks on the NRC? Our State Public Service Commission says if the NRC approves a cask, then it's

Ok. Why is it up to grassroots groups to evaluate their decisions? Shouldn't a State look over an NRC decision carefully before it accepts it? The State has to pay if problems arise.

"Peer review each others work" - this is good, "make criticizes public" - good also, "support research and development in alternative technologies approaches to disposing of radioactive waste". - good again. Here we are now with all our eggs in one basket - if Yucca Mt. is not feasible, then is no alternation plan. As I have said, my plan is to phase out nuclear plants and do what has always in reality been done - leave the waste in each State that allowed it's creation for them to put in the safest above ground container they each decide on, fenced in, guarded, and constantly monitored forever as a monument to the mistake they each made in hoping some other State would take care of their garbage for them.

"Use the opportunity provided by a recently mandated report to Congress to revisit the dual issues of multiple sites and multiple repositories." The waste has always been left at the site of creation so far, what makes you think this will change? To keep this up, only allows more waste creation which nobody wants or knows what to do with - in any other State - or country for that matter.

"The need to solve a serious national problem," "explore ways of responding to concern of nuclear utilities" - why does the public have to support them in creating more waste when they have created this problem draining \$1 out of every \$4 in our energy funds? This makes no sense economically or for public health and safety.

Page 45: You express here your concern as a group to "a bureaucracy that is resistant to change". That is the crux of the problem. "And it goes" - it's time for a major change now. Can we do it?

You refer to a regard to "quality" among American farmers. Not only quality, but "ethics" needs to be considered. The "I'll get mine and do what I want for my self my company, my family, my State - whatever, and let the rest of them take care of the waste, the environment, the future generations, "has got to stop. Our country is losing that basis of living by the "golden rule" we were all taught as kids. "Do unto others as you would have them do unto you." Sounds preaching, right? But if we try to put ourselves in the other persons shoes, it always helps solve problems. It's time that the heads of the defense and nuclear energy corporations realize that what they do has an affect on their children and grandchildren as well as ours. The public isn't something they don't belong to. They have got to get out of their small viewpoint and back off and look at the whole situation our country and the world it's in. We are all parts of a closely connected whole and we can no longer think of self as in isolation. It just doesn't work that way.

Now, this is a mother's view: I've looked very carefully at the whole radioactive waste program for the past several years and read extensively on the issue. I'm no technical expert, but I am a very interested member of the public. To gain my trust and confidence, please send me your final report and a review of the comments you receive. Once again I appreciate the fact that your report was requested. I am encouraged by your frankness in assessing the problem. I am hopeful that you will really listen to public comments. This problem will only be solved if we all work together to solve it.

I'm sorry if I wrote too much, but it all just poured out and I feel better for even being allowed to express it all. Thank you for taking the time to read it and for your concern.

Sincerely,

[signature on file]

Fawn Shillinglaw

(Mother of two fine sons who are concerned about the environment and wife of a husband who likes to fish in unpolluted streams)

NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

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March 5, 1993

Dr. Daniel P. Metlay
Secretary of Energy Advisory Board
AC-1
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

Enclosed are my comments on the "Draft Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management."

I did this by making comments in pen and ink on the draft report.

Sincerely,



for Judy Treichel
Executive Director

FC/br

changes in institutional culture already set in motion. But as DOE makes a transition to a post-Cold War environment, the alternative to what the group suggests may be even less appealing.

RADIOACTIVE WASTE MANAGEMENT

It is fitting that Secretary Watkins asked the Task Force to focus its attention on strengthening public trust and confidence in the Department's varied programs for managing radioactive waste. For these are the activities where the issue has become especially ripe; they are also the ones where the challenges for sustaining trustworthiness are the most compelling. A brief description of those activities and, more importantly, a distillation of what constitutes their programmatic cores is necessary to properly set the stage for what follows.

DOE has traditionally organized its radioactive waste management activities on the basis of who owns the material. Efforts connected to waste created by commercial nuclear power plants are the responsibility of the Office of Civilian Radioactive Waste Management (OCRWM). Activities associated with waste generated in the course of producing, fabricating, and testing nuclear weapons are the responsibility of the Office of Environmental Restoration and Waste Management (EM).²

An extraordinarily varied range of efforts fall under the rubric of radioactive waste management within the Department of Energy. Examples include

- Stabilizing uranium mill tailings piles
- Solidifying high-level waste from the Nuclear Fuels Services' reprocessing operations or from those carried out at the Hanford Reservation and the Savannah River Site, *INEL & West Valley*
- Providing expanded storage facilities for commercial spent fuel
This is the utility's job. ECE may help with R&D but doesn't take title to waste. ECE can assist utilities w/ dry storage tech.
- Cleaning up the environmental damage caused by the production of nuclear weapons material
obtaining permits for
- Designing, financing, building, ~~permitting~~, and operating facilities for disposing of different types of wastes
expanded fuel storage facility

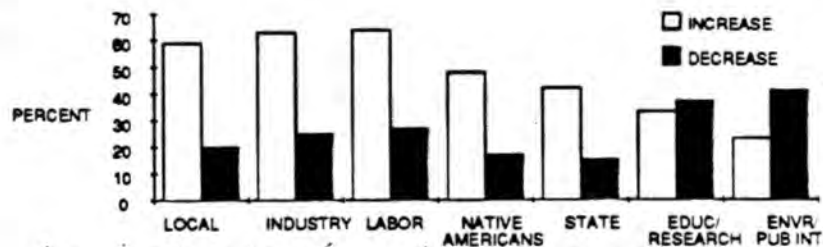
This diversity, of course, creates a corresponding diversity of interests and constituencies. Some stakeholders are involved across the board; others concentrate on specific undertakings that are particularly salient to them.

² One important exception to this division of labor arises from a 1985 decision by President Reagan to "comingle" in a single geologic repository high-level waste from the defense program with high-level commercial waste. Consequently OCRWM will establish criteria for accepting EM's solidified material.

*Changes made
See p. 4*

Although these numbers provide little solace for DOE policy-makers and senior managers, they are not quite as bleak as they appear on the surface. The data suggest that DOE has recently reversed what was generally recognized as a continuing and substantial decline in confidence. Nearly three-quarters of those questioned indicated that the Department waste management programs merit at least as much confidence as they did four years ago. Moreover, among state and local officials, labor unionists, representatives of business associations, and tribal leaders, for every two individuals who accorded DOE greater trust now than in the past, fewer than one accorded it less. Once again, the environmental community and representatives of public interest groups markedly departed from the prevailing pattern demonstrating progress earning public trust and confidence.

CHANGE IN TRUST AMONG GROUPS OVER FOUR YEARS



This is clearly skewed to respondents; the defense facilities. Same question re: Commercial HLW would give very different answers

See revisions on pg. 18

OBSERVATIONS AND FOUNDATIONS

Early in its deliberations, the Task Force sponsored two workshops. The first was organized by the National Academy of Sciences who brought together a number of scholars from disciplines such as sociology and administrative theory. They were asked to consider contributions the social sciences might make to thinking about the problem of strengthening institutional trustworthiness. The second was conducted by the National Academy of Public Administration who invited a dozen managers of organizations.¹⁷ They identified from their experience "best practices" for sustaining public trust and confidence. Those conversations coupled with insights obtained from individuals who spoke at the Task Force's meetings helped to guide the group to the intellectual framework that follows.¹⁸ A discussion of "first principles," the elements that form the lens through which the Task Force viewed its charge, is an appropriate starting point.

¹⁶ The proceedings of the two workshops along with the papers produced by participants are reprinted in Part Three of this Report.

¹⁸ At its seven public meetings, the Task Force spoke with over 100 members of the public, representatives of non-governmental organizations, State, local, and tribal governmental officials, and representatives of DOE programs and their contractors. Task Force members and/or staff visited the Yucca Mountain site, the Hanford Reservation, Rocky Flats, the Savannah River Site, and the Waste Isolation Pilot Plant. Informal conversations were conducted with DOE and contractor personnel at those sites as well as with representatives of non-governmental organizations and State and local governments.

In an attempt to expedite the program, legislation was enacted in 1987 that instructs the Department to characterize a site at Yucca Mountain in Nevada to determine its suitability for a repository. OCRWM has developed in a "bottom-up" fashion a nine volume, 6000 page blueprint for investigating that site. Extensive surface testing began last July, and subsurface exploration is likely to commence in the spring. According to its current estimates, OCRWM will need to spend more than \$6 billion over the next eight to nine years to complete its scientific evaluation of the site. *see page 5. \$6.5 bill*

If, based on the Department's recommendation, the President believes that site is suitable, and if the State of Nevada does not object or if its objections are overridden by Congress, DOE will then apply to the Nuclear Regulatory Commission (NRC) to construct a repository. That license will only be granted if there is "reasonable assurance" that the engineered and geologic barriers that comprise the repository system will meet or exceed the radionuclide release requirements set by the Environmental Protection Agency (EPA). The EPA standards, however, have been in a state of flux since 1987 when key elements were overturned in court.⁵ A provision of the 1992 Energy Policy Act compels EPA to repromulgate promptly new standards consistent with the findings and guidance of a Congressionally-mandated National Academy of Sciences' study.⁶ *(I have no doubt that this is what they'll do, but I'm sure you want to say) - the radiation standards*

ENVIRONMENTAL RESTORATION AND DEFENSE WASTE MANAGEMENT

At the height of World War II, new towns sprang up virtually overnight in obscure locations such as Oak Ridge, Tennessee, Richland, Washington, and Los Alamos, New Mexico. Each made a unique and historic contribution to the design and development of the weapons dropped on Hiroshima and Nagasaki. From that small nucleus of communities blossomed a large and widely-scattered complex dedicated to manufacturing and maintaining the country's nuclear arsenal. Events of the past few years reinforce the general impression of how well those who manned and ran the complex actually performed the tasks assigned by a nation confronted with an external threat.

But the exigencies of war -- both hot and cold -- compounded by yesterday's understanding about the biological effects of radioactive material and yesterday's sensibility about the fragility of the environment meant success came with a stiff price. By-products from the production reactors sit in tanks and storage pools, their final disposition uncertain. And it is an inescapable fact that the weapons complex is profoundly polluted by myriad varieties of hazardous waste, mixed waste, and radioactive waste. Established in 1989 as part of Secretary Watkins' Ten-

⁵ *Natural Resources Defense Council v. U.S. EPA*, 824 F.2d 1258 (1st Cir. 1987).

⁶ Energy Policy Act of 1992, Section 801(a)(1). The Act also instructed the EPA to apply those new standards only to a potential repository at Yucca Mountain. The possibility therefore exists that the Department's repository for transuranic wastes in New Mexico will have to meet a different protective level. *There should be more said about the EPA standard release is done & gaseous release*

this increases the level of defn. is beyond w. is appropriate here

ing initiatives was left. Words and acronyms such as Lyons Kansas, RSSF, AFR still resonate in the minds of those who have followed the program's fortunes over the years.

In 1982, Congress acted to reconcile, at least for the moment, a series of unresolved issues and to place a greater stamp of authority on the program's efforts. The resulting legislation, the Nuclear Waste Policy Act (NWP), can be understood as a blend of the intellectual framework advanced by President Jimmy Carter's Interagency Review Group and the Office of Technology Assessment along with measures that recognized and provided remedies for the widespread lack of trust in DOE.

That amalgam translated into four bargains. The "ethical bargain" committed the country to pursuing geologic disposal aggressively in the belief that the uncertainties associated with the technology could be managed and that the generation benefiting from nuclear power should have the responsibility to "solve" the problem of the wastes left behind. The "economic bargain" gave the industry a fixed schedule for opening a disposal facility and, more importantly, a fixed date for the government to accept title to the waste -- something that was seen as a prerequisite for the industry's future growth -- in return for a pass-through from rate payers to cover their full share of the costs of repository development and operation.

The "technical bargain" provided that a conservative program philosophy would be followed by investigating multiple sites in differing geologic environments. Yet for the first repository, only a small handful of locations could be considered. The "political bargain" called for a second repository, which was likely to be situated outside the region of the first. It also offered the host state and affected tribes the right to participate in a wide range of program decisions, oversight authority, and disapproval over the final choice of site. But that objection could be overridden by a vote of both chambers of Congress.

Although concerns were raised at the time about potential conflicts among the bargains, the prevailing atmosphere upon passage was one of guarded optimism. Very few observers, however, would likely have predicted that, less than a decade later, the technical and political bargains would have collapsed altogether and that the ethical and economic ones are seriously threatened.

What largely remains from the NWP is DOE's almost single-minded dedication to construct a repository as expeditiously as possible. That dedication reflects a commitment to implementing the NWP and to preserving its economic bargain. It aligns the program's activities with the most visible and comprehensible indicator of success -- meeting schedule milestones. And it is also a natural and expected consequence of being responsive to the views and the priorities of legislators and constituencies who are the most salient to the agency's policy-makers. Indeed one might well argue that to behave otherwise would be to breach the confidence of one vital sector of the "public," -- electric utilities and Public Utility Commissioners -- who can neither understand nor accept the Department's inability to maintain a schedule or to control costs. DOE's position is all the more understandable given the uncertain returns from behaving differently. But this determined pursuit of a repository has had ramifications in three

Here the problem - all involved parties but opposed the growth of nuclear power would be forced to play a part in a system with a goal that they didn't want. For a discussion of the relationship between trust and policy agreement, see pp. 15-.

interconnected areas: the Department's response to technical over-seers, its defense of the technical integrity of its efforts, and its stance with regard to complying with regulatory standards. All of these areas are relevant to the Department's quest for public trust and confidence.

Law and tradition have placed four external bodies in a position to give independent advice on the technical aspects of the program. The National Academy of Sciences' (NAS) Board of Radioactive Waste Management has been involved since 1955. The Nuclear Waste Technical Review Board (NWTRB), a group of Presidentially-appointed experts, was established by Congress in 1987. The host-state, Nevada, and the *situs* County, Nye, also have special rights under the NWPA as amended to review and comment on site characterization activities.

DOE has treated advice received from them all as just that, advice. As it has every legal right to do, the Department has sometimes accepted recommendations, and other times it has rejected them. For many stakeholders, including those who wish the Department to succeed in developing a geological disposal system and who even are open-minded by the suitability of the Yucca Mountain site, what is troubling is the *rationale* for acceptance or rejection. While no general pattern holds true in every instance, the best predictor of whether the recommendations are ignored seems not to be their intrinsic technical merit but whether they significantly alter the prevailing program philosophy or imply changes in approach that are perceived to cause serious delays in repository development.²⁰

Fifteen years ago, the Department was cautioned that organizational and political commitments could so attach themselves to a particular site that "insufficient weight might be given to technical data developed on later. Because of the presence of this risk, a program...might lose some degree of public support. Care would have to be taken that technical adequacy remained a prerequisite for site selection, and *the public must be provided adequate assurance* that this is so. [emphasis added]"²¹ OCRWM's leaders recognize well this concern, and they have offered two forms of assurance. First, they have stated unambiguously that if information is uncovered in the course of site characterization, they would recommend that work not continue and that the site be abandoned. Second, they have pointed to the elaborate layers of technical oversight, including independent external advisors and ultimately the licensing authority of the NRC.

As an atmosphere of distrust pervades the program, it is hardly surprising that OCRWM's declarations of intent have been greeted with some skepticism. And given the program's mixed record of responding to outside advice, technical adequacy cannot be guaranteed on this basis. Moreover, because the level of confidence accorded NRC does not appear to be appreciably higher than that bestowed on DOE, the licensing exercise may also not be sufficient. Indeed, many stakeholders find it difficult to imagine that NRC would reject an application after so much time and resources had been committed to exploring one piece of geology, especially since no other site would be available as a back-up.

²⁰ This seems especially the case with respect to recommendations from the NAS and the NWTRB.

²¹ *Subgroup Report*, p. 81.

NRC has become an
apparatus to be a working partner.
ENRC has never refused a
license. ←

This statement
is not
factually correct.

Bymanoki did not party
much might
The Task Force disagrees; D
went to extraordinary
efforts to resolve
that technical
dispute

Many of these
people have had
lifelong association
with DOE/AEC.
They are not
even as obj.
tive as the
others be-
cause they
are closer to
a coach to
help DOE in
a good job.
The Task Force
disagrees with the
characterization

input
information

OCRWM's determination to develop a repository as expeditiously as possible can subtly subvert its repeated public commitments to comply with all applicable health and environmental regulations. At the same time OCRWM was promising regulatory compliance in its *Draft Mission Plan Amendment*, the Department incorporated into its National Energy Strategy a bill to preempt Nevada permitting authority. In recent months, OCRWM leaders have complained that EPA's high-level waste standard is ill-conceived and fails to justify with health benefits the substantially increased cost of development it seems to dictate. They have also hinted that NRC's regulations are overly burdensome. There are, of course, established administrative mechanisms for modifying promulgated or proposed regulations. These were not followed; instead the Department supported a legislative initiative to alter both regulatory regimes. While these tactical choices are arguably reasonable, in the current contentious and distrustful political environment, they may confirm the fears of those who believe that DOE will circumvent the regulatory process if necessary to get a repository at Yucca Mountain.

new site
specific
regulations
all make
suspect
there are
currently
no site
specific
regulations

ENVIRONMENTAL RESTORATION AND DEFENSE WASTE MANAGEMENT

DOE and its predecessor agencies have been managing radioactive waste from the defense program since 1944. As a practical matter, however, that management has just consisted of a series of interim measures and improvisations for storing (rather than disposing permanently) the by-products. Similarly AEC scientists and leaders, and their successors, were well aware that if radioactive materials were released or escaped, they could harm plants, animals, and people. Yet, for whatever reason, they failed to take the adequate steps to prevent widespread contamination and pollution.

there was (and
is) way to "do it"
should have
well manage

On several occasions during the 1970's and early 1980's, State governments and environmental groups sought relief and remedies for a situation that showed no sign of improving. Those actions challenged a long-standing organizational imperative that was, if anything, even more dominant and supported by powerful interests than the organizational commitment to develop a repository expeditiously: the defense program could not permit itself to be subjected to external control and monitoring.²² To be sure, that imperative flowed logically from legitimate concerns about national security. But it did send an emphatic message to interested parties, if there is a need to alter the way defense wastes are managed or the way weapons-related activities affect the environment, the agency shall be the sole judge of what should be done and how well it should do it.

discretionary
functions

The discovery in 1983 of numerous substandard hazardous waste disposal practices at the Y-12 Plant at Oak Ridge was the catalyst that forever changed the Department's world. The Legal Environmental Assistance Foundation (LEAF) and the Natural Resources Defense Council filed

²² The difference in the approach taken by Congress, at the strong urging of the Department, to licensing defense TRU-waste repository and the approach taken to licensing a civilian high-level waste repository is a striking example of this imperative.

rived from estimates provided by DOE, there is likely to be a built-in reluctance on the part of the regulators to continually make adjustments because commitments cannot be met.

TECHNOLOGY

*Schedule slippage for the right reasons -
Could be acceptable to stakeholders.*

*The Task Force
agrees.
See pg. 13.*

Approximately ten percent of the EM budget is allocated to developing new technologies and bringing them on-line in time to facilitate compliance with applicable laws, regulations, and agreements and to reduce the costs of doing so. There have been some accomplishments in areas such as horizontal well technologies and penetrometer electromagnetic mapping. It is too soon, however, to judge how many truly new technologies will be developed and how useful they, in fact, will prove to be. To the extent that the program does not succeed within its "window of opportunity", many of the pressures it now confronts will only be exacerbated.

SITING

With the exception of WIPP, current program operations are being conducted on the defense complex sites. Future ones related to waste storage, treatment, and disposal will require the siting of numerous new facilities. One of the issues that the EM's Programmatic Environmental Impact Statement will address is where, in general, those operations shall be located. But ultimately specific sites shall have to be selected, and EM will have to forge a process for making those choices. As OCRWM can attest, devising a method for equitably and openly picking places is a daunting task. *- more should be said about forced siting.*

FACILITY TRANSITION

As noted above, EM has taken "ownership" from Defense Programs of the Hanford Reservation and the Feed Materials Production Center, and it will likely become the landlord at Rocky Flats. At some time in the near future, it may become responsible for the Mound and Pinellas Plants. Those transitions, and the others that probably will follow as the weapons complex further shrinks, will raise issues such as worker retention and retraining and the creation of planning mechanisms that will permit close collaboration with State, local, and tribal governments.

For facilities that remain under DP control but that still have a large EM presence, the situation may pose its own special dilemmas. If the two DOE units adopt differing philosophies or promote diverging organizational cultures, mixed messages could be sent to the interested and involved publics. In such a case, hard-fought efforts to sustain trustworthiness may be unwittingly damaged.

COMPARISON OF THE TWO INSTITUTIONAL CONTEXTS

As one might expect of units within the same Department, the institutional contexts surrounding the OCRWM and EM programs possess some common characteristics. But they vary in a

4. IF DOE IS TO RESTORE PUBLIC TRUST AND CONFIDENCE, IT WILL HAVE TO TAKE STEPS THAT MIGHT BE CONSIDERED UNNECESSARY FOR AN ORGANIZATION THAT HAS MAINTAINED PUBLIC TRUST AND CONFIDENCE OVER LONG PERIODS OF TIME.

Organizations that have earned public trust and confidence have greater policy-making flexibility than those that have not. Because that consideration had previously been well integrated into the former organization's choices, it can better afford, on occasion, to adopt measures that will reduce trustworthiness in the future. The Department of Energy does not have that luxury. For the agency is precariously balanced on a steep slope that corresponds to the trajectory needed to build trust and confidence. It requires substantial efforts to make even a modicum of progress; one slip leads to an accelerated decline.

This means that Departmental leaders will have to make choices that consistently and unambiguously demonstrate an interest in strengthening trustworthiness. Those choices may not appear "cost-effective" in a conventional sense. Moreover, they may disrupt some internal routines as well as some long-standing external relationships. But it is the strong view of the Task Force that DOE stands little chance of strengthening public trust and confidence unless it recognizes that its decision-making behavior will have to fundamentally change.

5. THE LEGACY OF DISTRUST CREATED BY THE DEPARTMENT'S HISTORY AND CULTURE WILL CONTINUE FOR A LONG TIME TO COLOR PUBLIC REACTION TO ITS RADIOACTIVE WASTE MANAGEMENT EFFORTS. ONLY A SUSTAINED COMMITMENT BY SUCCESSIVE SECRETARIES OF ENERGY CAN OVERCOME IT.

The term "legacy" is used deliberately; distrust, like the albatross, passes to each new organizational leader and his or her administration. The only open question is whether the burden, passed in turn to the next leader, shall become heavier or lighter. Whereas distrust lingers and adheres, trust is always provisional and transitory. After DOE had done a poor job in explaining the consequences of a very small tritium leak, one senior manager at the Savannah River facility observed, "Decades of responsible interaction have gone by the board; the loss of trust is irreparable." Put starkly, the Department has little slack to draw upon; it cannot count on receiving the benefit of the doubt. These circumstances suggest not only that trust will not be earned overnight but also that policy-makers will have to continually keep its production "high on their screens."

See discussion on pp. 62-63
 In it, economic
 to get through
 to the public
 to gain T & C?
 Like you can't
 it may not
 really work
 in the long

It will have to show considerable competence to get the job done - after making the right decisions

The Task Force agrees

In Nevada it may be growing. - The data here is quite conflicting

EM has also laid out an ambitious and quite comprehensive set of objectives it hopes to achieve as a result of its public involvement activities. Indeed, it appears to be willing to use stakeholder input in ways that go beyond what is required by law. It is asking the many publics to raise issues, question assumptions, and, in effect, to become partners in making the program succeed.

Concerns have been raised that the promise of public involvement has not matched the reality. Examples often mentioned include the way managers responded to criticisms expressed at the Stakeholders' Forum. In addition, at the first meeting of the EM Advisory Committee, the group unanimously requested that a representative from one influential environmental organization be invited to join the panel; that request was not granted. Finally, some have wondered whether the program really was listening to public comments about the Implementation Plan for the PEIS. It appeared that a number of views advanced were dismissed without reason or explanation. Whether EM's good intentions translate into a meaningful process that strengthens institutional trustworthiness remains a question for which no answer is yet available.

4. EM STILL HAS TO DEMONSTRATE THAT IT CAN SUSTAIN PUBLIC TRUST AND CONFIDENCE WHEN IT GRAPPLES WITH HIGHLY CONTENTIOUS ISSUES.

The environmental restoration and defense waste management program is carrying out work in over 100 jurisdictions. Thousands of discrete sites are being assessed; remedial actions are being undertaken; disparate waste streams are being treated and converted into forms suitable for storage and disposal; research is being supported to invent the technologies of the future. In all this activity, EM has not yet to encounter issues that strongly polarize the affected parties.

Two issues in particular are likely arouse considerable controversy: assigning priorities for allocating scarce resources and developing a process for siting new treatment or disposal installations. Each community is predisposed to believe that money spent attending to its problems is money well spent and that it has already borne its fair share of the burden for hosting a noxious facility. By most accounts, DOE historically has not been able to resolve such contentious issues without experiencing a loss of public trust and confidence. Should EM succeed, it would be a signal accomplishment.

*moving
waste well
cause
problem
The Task
Force agree*

5. THE PROGRAM INCREASINGLY WILL BE AT RISK OF BEING TRAPPED IN VICIOUS CYCLES THAT REDUCE ITS ABILITY TO MAINTAIN INSTITUTIONAL TRUSTWORTHINESS.

Up until now EM has enjoyed a strong consensus on the need to address a serious national problem and a natural willingness to credit a new undertaking. Those conditions are not likely to last indefinitely. EM may find itself, like many other federal bureaucracies, plagued by insufficient resources, slipped schedules, and overly optimistic projections of technological ad-

to advocate that they be *consistently and widely accepted throughout the relevant programs*. For it is critical that the Department take advantage of the positive lessons it has learned.

INTERACTIONS WITH EXTERNAL PARTIES

DESIGN BASIS

When agencies are the initiators of programs that could be seen as levying more potentially harmful effects than benefits on citizens and communities, agency leaders should strive to give all groups of citizens and their representatives a sense of involvement and fairness in negotiating the terms of their immediate relationship. In general, the agency should commit itself to:

- Early and continuous involvement of State and/or local advisory groups as well as national advisory bodies on which a broad range of stakeholders (including, but not limited to the nuclear industry, electric utilities, public utility commissions, potential host states, communities, and tribes, environmental and public interest groups) are represented. That involvement would be characterized by frequent contact, complete candor, rapid and full response to questions, and assistance in increasing the technical and oversight skills of the community.

- Active, periodic presence of very high level agency leaders making them visible and accessible to citizens and their representatives.

- Unmistakable agency and program residential presence in the locality that contributes its energies to community affairs and pays through appropriate mechanisms its fair share of the tax burden.

- Assuring the availability of negotiated benefits for the community along with the resources that might be needed to detect and respond to unexpected costs.

- Consistent and respectful efforts to reach out to state and community leaders and to the general public for the purpose of informing, consulting, and collaborating with them about the technical and operational aspects of Departmental activities.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS THE DEPARTMENT

1. To provide information fully and rapidly, the Department should

- Rely on the "pre-decisional" Freedom of Information Act exemption only under exceptional circumstances, which are candidly explained.

The citizens must agree with the necessity of the activity because they see the goal to be achieved. Letting a community to agree isn't the deal. It should be a full player. The Task Force agrees the community should be a full player in view of policy and policy agreement found on pp. 15-16

What are the precedents for negotiated benefits? Usually communities give incentives for businesses to come in. Don't payoffs are bribes. The affected local gov't is supposed to evaluate economic impacts. It is supposed to negotiate compensation.

- Require DOE contractors to conduct equivalent training for their employees. Their performance evaluations and awards would be structured to include contributions to the overall public involvement effort.

4. *To make public involvement a means for creating partnerships, the Department should*

- Develop initiatives to ensure that a broad range of stakeholders are involved in the decision-making process beginning at the predecisional stage and continuing through its ultimate implementation.
- Place greater emphasis on periodic informal consultations to supplement more formal public meetings, hearings, and updates.
- When formal processes are used, devise agendas and formats jointly with representatives of stakeholders.
- Create and rigorously enforce procedures that produce thoughtful and specific responses to public comments.
- Obtain and use advice from stakeholders about what policy alternatives should be analyzed and evaluated.

5. *To make the Department's scientific work even more credible, it should*

- Expand to the maximum extent possible its peer review network to include experts from other countries.
- Jointly design and conduct experiments and share data at the earliest possible time with teams from host States and affected communities and tribes.
- Seek authorization for joint auditing of quality assurance programs.
- Be prepared to "bend over backwards" to address and resolve, if possible, plausible scientific arguments that might arise over the life time of the waste management programs.
- Allow stakeholders to nominate, subject to negotiated preconditions, individuals who would participate in exercises that elicit the "expert judgments" that are often employed in safety and risk analyses.
- Clarify carefully and publicly the reasons when advice from technical overseers, such as the National Academy of Sciences and the Nuclear Waste Technical Review Board, is not accepted.

find truly independent experts like or there. Scientific independence is not always a given with politicians. The Task Force agrees. See revised language on pg. 58.

maybe it's the goal.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS THE DEPARTMENT

1. *To build on the efforts already in place to promote a "new culture" within the Department, it should*

- Undertake an assessment to determine to what degree the current incentive structure actually rewards those whose behavior is consistent with the objectives of the emerging culture.
- Develop measures by which improvements or decrements can be objectively charted.
- Consider the deployment of "trust and confidence" tiger teams that would regularly evaluate how different units performed.
- Disseminate on a systematic basis experientially-derived "best practices" for building, sustaining, or recovering public trust and confidence.

2. *To ensure that the public trust and confidence implications of critical Departmental activities have been properly identified and weighed, the Secretary should*

- Order that any analysis of policy options presented to him or to Program Secretarial Officers include an explicit assessment of the impact on trust and confidence for various segments of the public.
- Support efforts to increase the objectivity of those assessments over time.

- Require a sound explanation for the recommendation of an option that is likely to substantially weaken the trust and confidence of any significant segment of the public,

Why would there ever be plans that lowered-trust? Because it may not be possible always to maximize the production of public trust and confidence. See pg. 13.

- Publish that explanation along with a plan for mitigating the causes of lower trust and confidence.

- Review the predicted effects for degree of consistency with actual public reactions. Publicize such reviews both for internal managerial purposes and public understanding.

3. *To ensure that organizational dysfunctions are not responsible for decreased institutional trustworthiness, the Department should*

- Devolve greater authority and responsibility to the Field Offices to manage issues that have significant trust and confidence implications at the local level.
- Enhance the connections between policy, program decisions, and budget.
- Increase organizational redundancy on safety critical activities.

- Institute overlapping self-regulatory processes.
- Reward the discovery of error.
- Maintain sufficient employee technical and managerial capacity to oversee at a rather detailed level contractor activities.
- Support and develop mechanisms to learn from innovations by Field Offices that have increased public trust and confidence.
- *Have people who understand the big picture*
- 4. *To ensure that central and crucial technical issues are well ventilated, the Department should*
 - Create competing teams of technical and scientific experts to peer review each others' work. (Faculty at a public university in the host state might also perform this role.)
 - not under "Cooperative agreements."*
 - Make their critiques public.
 - Provide incentives (resources, prestige, etc.) if they persuade the broader expert community of the soundness of their arguments.
- 5. *To ensure reliable and high-quality technical and programmatic performance, the Department should*
 - Establish incentives for quality work as well as measures of quality.
 - Be willing to revise schedules rather than decrease quality.
 - Work with affected parties in establishing both the measures of quality and schedules.

assigning only superior personnel (in all respects)
DOE should develop clear guidelines & directives for managers. Tech performance
SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED BY OCRWM

1. *To demonstrate its commitment to taking into account the interests of the citizens of Nevada, OCRWM should* *This is the "Nevada Initiative" all over again.*
 - Undertake public and private initiatives to initiate a dialog with State officials.
 - Be quite forthcoming with respect to what it offers, but seek as part of the bargain appropriate conduct from the State in the relationship.
 - DOE should not condition its offer on the State dropping its opposition to characterizing the Yucca Mountain site.

make reference to the point, 1st of page 18 about hurrying to build a repository.

- Offer the same terms and conditions to the *situs* County, Nye, whether or not the State enters into a relationship.
2. *To acknowledge by deeds that the "first-of-a-kind" nature of its activities requires special attention to public trust and confidence, OCRWM should*
- Aim to design a repository system whose predictable performance exceeds by a substantial margin the standards set up by the regulators.
 - Adopt a technical strategy that takes into account ways of making performance claims persuasive to broad segments of the public. This might involve the use of multiple, redundant barriers including robust engineered barriers.
 - Devise a process for characterizing and developing potential repository sites that is sequential, incremental, and specifically designed to learn from and respond to new information.
 - Leave no room for a mistaken impression to arise that the program is in anything other than an experimental mode. *Make it research - not the building of the repository.*
 - Foster a culture that will resolve uncertainties in a manner that places the highest priority on protecting health, safety, and the environment.
3. *To acknowledge the symbolic and real barriers to trust and confidence that arose when the bargains contained in the NWPA either collapsed or have moved to the verge of collapse, OCRWM should*
- Support research and development in alternative technological approaches to disposing of radioactive waste.
 - Use the opportunity provided by a recently mandated report to Congress to revisit the dual issues of multiple sites and multiple repositories.³⁵
 - Emphasize that the primary driving force behind this program is the need to solve a serious national problem. *What is the problem?*
 - Explore ways of responding to concerns of nuclear utilities that derive from the difficulties the Department has encountered in constructing either central storage facilities or a geologic repository on a timely basis.
- The concerns of people worldwide are more important.*

*The Task Force
has revised
this recommend-
ation.
See pg. 61*

³⁵ Energy Policy Act of 1992, Section 803.

Bjorn Wahlstrom
Technical Research Centre of Finland
Espoo, Finland

2/24/93

A. The Task Force does not find this pessimism to be unfounded. Yet it believes the problem is of sufficient importance that the struggle for improvement cannot be abandoned.

B. The issue of compensation is a very delicate and sensitive one. If compensation comes to be seen as "accepting bribes" then providing it may be counterproductive. While the availability of benefits does have some affect on public trust and confidence (see pages 53 and 57), the Task Force does not believe it is wise to make compensation a centerpiece for proposals to strengthen institutional trustworthiness.

24.2.1993

Professor Todd R. La Porte
University of California, Berkeley
Dept. of Political Sciences
Berkeley
CA 94720
USA

Dear Todd,

Thank you very much for your letter and the report. I found it very interesting and it raised some thoughts. The report is very much in the line of my own views that it is necessary to build trust and confidence. I enclose a short note I wrote for the IAEA Senior Expert Symposium in Helsinki 13-17 May 1991 (Electricity and the environment, IAEA-TECDOC-624, Sept. 1991).

The problem seems however to be that it is easy to set up requirements for a process of preparing policies on controversial issues, but it is far harder to get such a process into operation. In spite of good intentions it is too easy to destroy whatever confidence through some unthoughtful statements or actions. My question is, if it really is possible to utilize such an ideal path. My feeling is that we end up in almost the same controversies regardless of the good intentions. I remember some studies on the nuclear referendum in Sweden in the early eighties which left many common people with increased instead of decreased confusion.

One of the deep dilemmas in social decision making is to set the level on which it is necessary to base policies on the public opinions. It is well known that people make errors when issues are complex, when there are time pressures and when stakes are high and probabilities small. It is clear that the extremes of either expert dominance or populist demagoguery should be avoided, but the problem is to reach a balanced and believable approach between those two.

Nuclear power carries several dilemmas. The technology is in many aspect different from all other technologies. The plants cannot be shut off immediately and the waste is dangerous in a time perspective of ten thousand years. The technology is global in that respect that a small incident anywhere appears in the news headlines everywhere. We are however relying on nuclear plants already and a doubling of the nuclear power plants in the world would probably not double the problems.

Public fears seems to be forcing the society into less acceptable solutions. Nuclear power has the prospect of decreasing the burden of CO₂ emissions and correspondingly global climate change. Some solution of the nuclear waste problem is certainly better than the

alternative prospect of storing the waste at the plants for an unlimited future. To me it seems that we have adopted a technology without proper social institutions for policy making related to the technology. There is no return from yesterdays decisions, but we seem to be stalemated in indecision.

Nuclear power is different, but also similar to other large scale technologies. Reliance on technology has made it possible for the world population to reach the present five billions plus. Providing food and sheltering for a population which is expected to double by 2030 puts serious strains on all available resources. To single out one energy source seems in this situation extremely unwise. The prospects of forcing a cut-back in the standards of living for billions of people brings along far more frightening scenarios for the nearest future than the possibility of a leak from a nuclear waste repository some thousands of years from now.

In my mind there are more deep questions of how to prepare difficult issues for public decision making than we are able to tackle with present institutions. The transfer of views from individual to public and from local to global are places where the common should be allowed to have a higher weight. There is no prospects for reaching a high degree of support for controversial decisions, but fair compensations may render the necessary solutions livable. Building trust in such a system of fears, force and compensations seems even harder.

I also enclose a draft of a paper where I have elaborated on some of these issues. I look forward to your comments.

Best regards, Yours


Björn Wahlström

Stuart Waymire

Affiliation not mention, although comments were expressed mailed by
Oram, Ingram, and Zurawski, an public relations firm working for
the American Nuclear Energy Council
Las Vegas, Nevada

No date

A. The Task Force believes that no single factor is predominantly responsible for the lack of public trust and confidence in DOE's operations in the state of Nevada. It does not dispute the claim that, in a highly charged political environment, partisans will present their cases in way that can advance their interests. They will emphasize issues that appear to resonate with large segments of the public. By focusing on the question of trust and confidence, the Nevada Nuclear Waste Project Office may have also caused a further decline in it. See pages 37-38.

B. The Task Force agrees that even faithful implementation of all its suggestions does not guarantee an increase in public trust and confidence. See the discussion on pages 50-51.

C. The Task Force agrees that DOE should not "abandon its trust enhancing efforts." But to ignore input from an important stakeholder and to sidestep the state's oversight responsibilities and authorities almost certainly will doom those efforts.

The Task Force expressly wishes to dissociate itself from the personal attacks leveled in these comments.

Stuart D. Waymire
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89103
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Secretary of Energy Advisory Board
C/O Dr. Daniel Metlay
AC-1, 1000 Independence Ave. S.W.
Washington, D.C. 20585

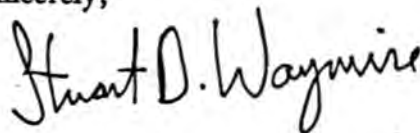
Dear Sirs,

This is in response to your request for comments on the draft version of the Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

My comments come as an author who is in the process of completing a four hundred page book on the political climate surrounding the Yucca Mountain nuclear waste repository. As an engineer and Nevada citizen with connections to the Nevada university system and to other politically knowledgeable sources, I have become privy to information that has a bearing on your report. Because of time limitations, I have only written a short comment as follows, but I believe there is a wealth of information that you and your advisory board have not seen which affects the climate of distrust that surrounds DOE in Nevada. Specifically, the political whirlpools surrounding Yucca Mountain are not random, but in large part orchestrated by certain factions within and without Nevada.

Further documentation of my comments are available on request, there simply wasn't time to include them here.

Sincerely,

A handwritten signature in dark ink that reads "Stuart D. Waymire". The signature is written in a cursive, slightly slanted style.

Stuart D. Waymire

COMMENTS ON:

REPORT OF THE SECRETARY OF ENERGY ADVISORY BOARD TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT

Prepared by: Stuart D. Waymire (a private Nevada citizen concerned with enhancing levels of trust regarding the Yucca Mountain Nuclear Waste Repository)

The draft report of the Task Force on Radioactive Waste Management (TFRWM) provides a broad analysis of the problems DOE and its contractors face in sustaining public trust in their implementation of a nuclear waste management program as well as a prescription for improving trust for these organizations in the future. While much of the report is to be commended, it overlooks the fact that a major cause of public distrust of DOE in Nevada regarding the Yucca Mountain project, is the Nevada Nuclear Waste Project Office (NWPO) itself, which has explicitly manufactured public distrust for ideological and political reasons. A

The following paper will attempt to document the systematic attempts by the staff of NWPO to poison cooperation between DOE and the citizens of Nevada, and describe the driving forces behind this disruption. NWPO's ulterior political motives have reduced their objectivity regarding the disposal of nuclear waste and the agency is no longer concerned with guaranteeing the safety of the Yucca Mountain site and mitigating the effects on the population. Rather, NWPO is engaged in forwarding a political agenda which may eventually foreclose any cooperation between Nevada and the Federal government, not only in the area of nuclear waste but on most technological issues..

The purpose of this paper is not to whitewash DOE's own problems in maintaining public trust, their miscues and mistakes are well documented and discussed by TFRWM and others and solutions to these problems are welcome. What we wish to demonstrate is that DOE is operating under special conditions in Nevada without precedent and that the good faith suggestions given by TFRWM in its report may not lead to successful enhancement of trust despite the best efforts of the DOE to do so. Progress may be made, however, if the Nevada NWPO is simultaneously held to some of the same trust enhancing standards as proposed for DOE. B

There are three important questions which need to be posed:

1) Are there any conceivable actions (scientific, managerial, organizational, etc.) that DOE can take that will improve the condition of trust between itself and the Nevada Nuclear Waste Project Office. If there are no reasonable measures that can be exercised to improve conditions, then attempts to mollify state opposition may be moot.

2) Are there any levels of proposed monetary compensation to the State of Nevada that

its politicians will accept to offset the impact of Yucca Mountain. If not, this suggests the state's motives in opposing the site are political in nature and not likely to ever be influenced by enhanced trust levels.

3) Is NWPO's mandate to conduct scientific oversight, or is it to run an anti-nuclear opposition campaign? If their mandate is the later, it is unlikely any degree of effort by DOE to alleviate problems between itself and NWPO will achieve viable results because NWPO's mission and reason for existence is opposition to nuclear energy in general.

Robert Loux, the executive director of the NWPO, has repeatedly made clear his view of what his agency's purpose is: namely to oppose at all costs the study and development of the Yucca Mountain nuclear waste repository. Since the State and its representative are committed to opposing Yucca Mountain *no matter what the scientific evidence*, it would be futile to try and change DOE's behavior without also looking at the conditions under which the department must operate within the State of Nevada

The entire premise of the TFRWM report is that there exist good-faith mechanisms for increasing cooperation between the DOE and Nevada's agencies, politicians and the citizens they represent. However, NWPO is not only emotionally locked in opposition to Yucca Mountain (a condition that might respond to trust enhancing measures), but is also *ideologically* locked in opposition. If the later is the case, then there are no means by which DOE's trust quotient can be raised to reasonable levels. This leaves two options:

- 1) Completely abandon trust enhancing efforts, or
- 2) Ignore NWPO's input and sidestep Nevada's oversight.

Neither of these options is desirable, however given a choice it is believed jettisoning NWPO is a far more favorable option that for DOE to withdraw into a bunker mentality.

ORIGINS OF DISTRUST

The actions of three main contingents within the Nevada Nuclear Waste Project Office are especially worrisome:

- 1) Socioeconomic studies section.
- 2) Leadership of NWPO.
- 3) Public Relations and lobbying groups within NWPO.

There are also two external issues that bear watching:

1) NWPO's incestuous ties with environmental special interests and a local advocacy group called Citizen Alert (sharing a graphic artist and even allowing Citizen Alert to publish a critical NWPO report on the Air Force nuclear rocket proposal as its own).

2) The political climate in Nevada, in which NWPO is used as a weapon against citizens who might have an open mind about the Yucca Mountain project.

In synergy, these factions surrounding and within NWPO have pursued a proactive disinformation campaign against DOE designed to destroy the trust in that federal agency. We'll address these concerns in order.

SOCIOECONOMIC STUDIES

The main contractor for socioeconomic studies for NWPO was Mountain West of Tempe Arizona. The fact that almost all the \$15 million dollars in socioeconomic funds spent to study impacts were done out of state (as was the peer review) indicates the likelihood that the best interests of Nevadans were ignored by NWPO in designing the socioeconomic studies. Even the socioeconomic peer review board hired by the state disagreed with the overtly rigged studies, but its opposition was purposely muted and its meetings eventually closed to the public. The fact that the socioeconomic studies were biased to promote a political agenda that relies on the distrust of not only DOE but technical institutions in general is unfortunately compelling.

By the bulk of reports done for the NWPO, we see the prime mover behind the socioeconomic studies was one Roger Kasperson of Clark University's Center for the Environment, Technology and Development (CENTED, directed by Kasperson). The contents of a paper called "Participation, Decentralization and Advocacy Planning" written by Kasperson in 1974 shows the direction NWPO has taken under guidance of its socioeconomic researchers:

"A third general objective is more self-consciously radical than the preceding ones. Some proponents of decentralizaation believe it to be a means for creating territorial power bases from which to contest established power erlite. This notion has its roots, of course, in the revolutionary experience of Communist China and the "city and country" model of world revolution. Decentralization, in this view, is a vehicle for political mobilization, a strategy for creative countervailing force, a force for democratization. Milton Kotler, for example, argues

The radical task which the left must undertake if it is to assist democratic revolution is to challenge the very concept of nationalism and central control. To be radical, intellectual and physical force must accord with the original phenomena of revolution - local insurrection and local control - within which structure democracy can flourish. The left must develop and articulate a theory of local sovereignty.

and also from Kasperson in 1974:

"To enable individuals to shed their dependency, future planners and social scientists

cannot deal with local issues in a vacuum. Reactive, directed advocacy can no longer lose sight of long range political, social and economic goals, lest (as with the antipoverty program) it become simply another form of "political perversion".

and:

"It is time for reconstruction to begin. But major social revision will require commitment to a set of alternative values and a search for institutions to realize them. Because this process will challenge established vested interests, each advance will only further escalate the resistance. The outcome will not be decided over sherry."

Kasperson evidently went looking for a revolution and found the nuclear waste issue to be the perfect testbed for his decentralist theories as they evolved from Marxist / Maoist dogma into Rawlsian anarchism. Nevada was the perfect guinea pig for this social scientist to prove his ability to manipulate the political process. In so doing, Kasperson and his co-workers sabotaged trust within Nevada as they manipulated their socioeconomic results to suit their political ends. In the process, they committed the cardinal sin of science, becoming a proactive part of their own social experiment.

There is little wonder that DOE is distrusted in Nevada after a corrupt socioeconomic experiment attempted to impose a politically correct Marxist/Maoist/Decentralist perspective on Nevada. In fact, all findings of the state's socioeconomic studies are suspect and the entire \$15 million in socioeconomic research done by Mountain West is in essence wasted.

In reality, the socioeconomic studies done for the state have become the primary vehicles for inflating fear, mistrust and suspicion of DOE because these fit the Maoist/Marxist/Decentralist/Rawlsian paradigm of the political geographer Roger Kasperson who sees technology as being distant from man. While this makes for great academic philosophy, it does not go to the heart of the matter at Yucca Mountain which is whether the technology will actually work.

LEADERSHIP OF THE NEVADA NUCLEAR WASTE PROJECT OFFICE

Robert Loux, as director of NWPO, is a dedicated anti-nuclear advocate who has used his bully-pulpit to sow distrust of the Department of Energy at every opportunity. For example, after a series of earthquakes rocked Yucca Mountain but caused only superficial surface damage, DOE representatives attempted to explain that earthquakes have only minor impact on subsurface facilities. In an interview with Roger O'Neil of NBC News July 22, 1993,

Loux had the following to say about the claims made by the respected scientist, Dr. Bruce Crowe:

"Well it proves one point, that DOE is going to be willing to say or do anything.

It reminds me of the old story about the optimist and the pessimist. When you throw the optimist into a room full of horse manure, he's the one looking for the poney. And I suspect DOE is trying to find the poney at Yucca Mountain."

Mr. Loux, it turns out, is a former high-school teacher who has no technical expertise but was politically appointed to his position for the express purpose of derailing the Yucca Mountain Project. His repeated attempts to undermine trust in DOE are transparent but effective, in fact his job depends on his being able to spread disinformation about DOE. Loux's close ties with the local protest group, Citizen Alert, consequently come as no surprise, and are in fact emblematic of the reality that NWPO is being used by special interest groups to destroy trust in the Department of Energy and its contractors at Yucca Mountain

Mr. Loux has purposely skirted the Code of Federal Regulations to staff NWPO with anti-nuclear factions. Most contracts for NWPO are let without Requests for Proposals or competitive bids specifically so anti-nuclear advocates can be paid to work for the state. This would not be so bad if these advocates were Nevadans, but the staff is instead hired from national interest groups who have no stake in Nevada's future.

As an example of a larger problem of non-competitive bids awarded to anti-nuclear protestors whose specific purpose is to create distrust of DOE, we offer the following letter from Judy Treichel (now a NWPO subcontractor awarded her \$150,000 per year bid by fiat from Bob Loux) to Bob Loux describing how she is trying to fool Nevada DOE project director into believing she can be an unbiased information officer.

Judy Treichel
Las Vegas, Nevada 89108
7-4-86

Dear Bob,

Here's the sort of stuff Bob Dickinson tosses into the weekly publication that goes to all So. Nevada. contractors. It makes me crazy every year when we renew our subscription but you really need to know what's printed in here and there's no good substitute.

In this article he uses strange logic. The first paragraph says that we don't want govt. handouts or interference. To achieve that we would take the nuke waste for the govt. He places the govt. where he wants it -- like it has nothing to do with our test site. Wilderness projects restrict us, but nuke sites don't!

Dickinson's group hasn't had any public functions for long time. I think the "fact" bank was the last correspondence. However, in the local papers pro-waste letters to the editor have been frequently appearing. I have lots of stuff I want to write to the papers but I don't dare do that while my proposal is grinding its way through Don Vieth's

red tape.

I met with Don last week. He took the proposal and letters and I am to call on Monday and see where we are. I think it will be a long negotiating process.

Thanks so much for your letter. It was great and should really help. The piece you wrote for the paper was good and I'm trying to see what I can do with it, without rocking the boat on my proposal. I'll let you know.

Till Next Time -

Judy

According to the Code of Federal Regulations, 10 CFR 600.436, section c

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 600.436. Some of the situations considered restrictive of competition include but are not limited to:

(iv) Non-competitive awards to consultants that are on retainer contracts.

Judy Treichel was brought in specifically by Loux on a non-competitive bid because Treichel is a Test Site protest organizer (Citizen Alert, Clergy and Laity, Nevada Desert Experience, etc.) with long experience in provoking confrontation with DOE. There was competition for the informational services that Treichel provides through her Nevada Nuclear Waste Task Force, but as the above letter shows, no competition was allowed for this post because Loux and Treichel were in collusion.

ILLEGAL PUBLIC RELATIONS AND LOBBYING EFFORTS

NWPO has also repeatedly ignored Federal regulations prohibiting the use of funds for public relations and lobbying. In fact, substantial funds have been spent by NWPO, both openly and through diverted funds, to promote public distrust of DOE, taking advantage of sophisticated public relations and lobbying professionals.

LOBBYING EFFORTS

Murphy, M.R. & Davenport, J.H.

Sutherland, Asbill & Brennan

TOTAL \$60,000

Tillson, D

TOTAL \$144,000

Peck, D.R.

TOTAL \$30,000

Phillips, F. J.

TOTAL \$97,000

Afton & Associates

TOTAL \$55,000

GRAND TOTAL \$315,000

PUBLIC RELATIONS EFFORTS

Joy Hamann Advertising	
TOTAL	\$170,000
Nevada Nuclear Waste Task Force	
TOTAL	\$1,278,889
Kamer and Singer	
TOTAL	\$90,000

Robert Loux, NWPO's director, claims their lobbying and P.R. efforts are strictly informational, but this is hardly the case. What is in fact being waged by NWPO is a sophisticated psychological campaign designed to destroy DOE's credibility, ironically paid for with nuclear ratepayer funds.

INFLUENCE OF THE ENVIRONMENTAL MOVEMENT

Were DOE's trust problems due strictly to local considerations, these problems would be surmountable. In reality, there is a national environmental movement whose main overriding goal is to shut down all nuclear technology. These forces have invaded Nevada and through their close ties with NWPO have worked overtly and covertly to destroy DOE's credibility.

Among the groups fighting Yucca Mountain are the Safe Energy Communication Council, Greenpeace, Sierra Club, Public Citizens, Citizen Alert, Friends of the Earth, American Peace Test, Hundredth Monkey, Don't Waste U.S., CAN-WIN, ad infinitum. The key is that these groups do not represent Nevadans, but are part of a well-funded national political movement.

Many of the environmental activists have as their primary goal shutting down weapons testing, but view Yucca Mountain as a related issue because of the plutonium contained in nuclear waste. Consequently, the peace groups are not motivated to protest so much by distrust of DOE, but because of the larger political question surrounding nuclear disarmament. For propaganda purposes, the peace movement needs DOE to be viewed as a tyrant. These groups will never be favorable to DOE's efforts at Yucca Mountain no matter what levels of trust are cultivated.

But how representative are the protest groups for what is good for America? A flier from Citizen Alert show their aims are extreme:

FUNDAMENTALS OF NUCLEAR WASTE MANAGEMENT

- 1) No acceptable disposal method for nuclear waste exists. Proposed methods will not dispose of the waste, only postpone contamination of the environment.
- 2) No level of radiation exposure is safe. Every dose carries a risk of damage. Epidemiological studies into cause/effect relation of radiation and health are premature and inconclusive. We need baseline health profiles for any community which has an existing or planned nuclear facility so we can start gathering

information.

3) Radioactive waste is radioactive waste. The distinction between types and levels, such as high level, low level, transuranic, etc., are artificial and arbitrary and should not determine handling procedures. All radioactive material should be treated with the same care.

4) Our present inventory of nuclear waste should be isolated in retrievable, aboveground facilities which are as durable as we know how to make them. All necessary political, social and financial arrangements should be made to ensure, to the best of our ability, its careful guardianship.

5) Existing nuclear waste should not be moved; it should be isolated on-site in retrievable facilities. Exceptions may have to be made in rare cases where not even a carefully designed, retrievable facility is able to secure public health and safety; for instance when waste is located on an active earthquake fault or flood plain.

6) No more waste should be created . . . from weapons, from electricity generation or from industry. Wastes from nuclear medicine are a miniscule portion of the radioactivity of our waste stream. Their disposal poses a manageable problem because of their short half lives and low concentrations; they can be tolerated until reliable substitutes can be found.

The depth of Citizen Alert's scientific naivete and their alarming brand of apocalyptic environmentalism are displayed rather boldly by the preceeding position paper. What on the surface may seem to many to be admirable concern turns out on inspection to be revolutionary and more than a little bit daffy:

1) While it is true nuclear waste cannot be made instantly benign and does require millenia to degrade, contamination of the environment is no more inevitable nor dangerous from radioactive waste than it is from other artifacts of civilization. Coal plants spew by far more Uranium, Thorium, Carbon 14 and other radioactive substances into the atmosphere than the nuclear industry. Radioactive waste from nuclear energy production is compact, solid, traceable (even a cheap geiger counter can detect a leak) and can be isolated permanently from the environment in geologic repositories, unlike other energy sources whose pollution is spread around the globe.

2) If Citizen Alert truly believes no radiation level is safe, then they should protest human exposure to the sun, television sets, airline travel, out door cosmic ray exposure, x-rays, cigarettes, and their own skeletons, which are all sources of radiation (more on this in later chapters).

3) All radioactive waste does not have the same intensity and biological effect, that's why there is the special measurement called the rem used to distinguish different intensities of biological exposure. All radioactive waste should NOT be handled with the same care, it is lethal to handle spent fuel direct from a reactor, yet the minute amounts of Carbon-14 caused by cosmic rays striking nitrogen in the air is not something we even consider a waste and would never consider isolating.

4) Above ground storage is NOT safer than geologic storage. As for the statement "All necessary political, social and financial arrangements should be made to ensure, to the best of our abilities, its careful guardianship", in reality they are calling for a totalitarian Green police

state, though this may not have occurred to Citizen Alert in quite those words.

5) If Citizen Alert considers radioactive waste so deadly, why would they endorse on-site storage when this statistically increases the risk of exposure by the population? As we've seen before, on-site storage makes sense only if the true objective is decentralization, a political dogma born of the deep-ecology anarchist movement and not from any concern for the safety of Nevadans or Americans in general. As for the rare case exceptions, just about every major nuclear power plant is near some combination of rivers, faults, oceans or other critical areas which makes Citizen Alert's own point moot.

6) "No more waste should be created. . ." This is a fine sentiment, but the problem is hardly limited to nuclear waste. Every industry, even the protest industry, creates waste (everything from spent fuel to discarded protest posters). Relatively speaking, however, nuclear waste as contained at Yucca Mountain will be environmentally benign compared to other energy industries and the chemical industry. As for radioactive nuclides being replaced in medicine, this is highly unlikely unless we wish to return to invasive procedures with sharp scalpels in everything from cancer treatment to medical imaging.

Consequently, the suspicion is that the environmental movement in Nevada distrusts not only DOE, but any technological institution, no matter what the benefits of that technology might be.

POLITICAL CONSIDERATIONS

Finally, there are political considerations in Nevada which make increasing trust in DOE problematic. Nevada Senators Bryan and Reid, Governor Miller and the head of the Nevada Nuclear Waste Commission, former governor Grant Sawyer, are all lawyers. Each has spent a lifetime in politics, and none have any technical background. To these politicians, Yucca Mountain is a vote getter, they have little concern for establishing or maintaining trust with DOE.

In fact, because they value this issue so much, the Nevada political elite have given Robert Loux a sinecure at the Nevada Nuclear Waste Project Office specifically to oppose Yucca Mountain, no matter what laws he breaks or what truth he hides. As Senator Bryan implied, nuclear waste would come to Nevada only over his dead body.

Consequently, because there now exists a political monopoly in Nevada which thrives on bashing DOE, and specifically promotes disinformation through their own \$5 million per year agency (NWPO) designed from scratch to propagandize against nuclear technology, there

is little wonder DOE is distrusted in Nevada and the wonder is that it has retained its integrity at all under these trying conditions.

CONCLUSIONS

While it may not be possible to change all the adverse conditions faced by DOE in its efforts to "do the right thing" regarding the siting of the nuclear waste repository, there is one development which might make life easier for all concerned.

In the spirit of the TFRWM suggestions on how DOE can improve its trust level, it is proposed that the Nevada Nuclear Waste Project Office be held to the same standards. Unless NWPO is subject itself to normal rules of conduct, DOE must be prepared to fulfill its mandate despite local opposition and manufactured distrust. This is certainly not an optimal way to conduct research since it implies a broken feedback loop, yet it may not be physically possible for DOE to increase trust levels given NWPO's aggressive and well funded opposition and its radical ideology.

The feeling is that we should "bring NWPO home". The Nevada university system and local contractors must be relied on by NWPO to provide the substantial part of research, just as DOE should rely on local talent. NWPO's scientists should meet the same high standards of competence as DOE and be ready to answer for their actions. NWPO needs to restore trust as much as DOE.

To bring this about, no better guide exists than the TFRWM suggestions already developed for DOE. With simple modifications (as presented following) perhaps a level of trust can finally be achieved in Nevada regarding the study of the Yucca Mountain nuclear waste repository.

NEVADA NUCLEAR WASTE PROJECT OFFICE POLICY REFORM

TO ENHANCE TRUST IN NEVADA

INTERACTIONS WITH EXTERNAL PARTIES

The Nevada Nuclear Waste Project Office should strive to give all citizens and their representatives, whether for or against Yucca Mountain, a sense of involvement and fairness in negotiating the terms of their relationship. In General, NWPO should commit itself to:

- * Broaden its reach beyond environmental special interest groups to include continuous involvement of DOE, local pro as well as anti Yucca Mountain groups, and advisory bodies composed of Nevada's professional engineers, university faculty, business leaders and even national nuclear trade organizations.

- * Active, periodic presence of very high level NWPO leaders making them visible and accessible to citizens and their representatives.

- * Assuring the availability of negotiated benefits for the community along with resources that might be needed to detect and respond to unexpected costs.

- * Consistent and respectful efforts to reach out to DOE and pro-Yucca Mountain community leaders and to the general public for the purpose of informing, consulting and collaborating with them about the technical and operational aspects of NWPO activities.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS NWPO

1. To provide information fully and rapidly, NWPO should

- * Release any NWPO generated material that has been shared, even informally, with any other non-governmental organization.

- * Disseminate without exception information about past practices that may raise questions about potential political and economic activities.

2. To ensure that programs speak consistently to Nevada's citizens, NWPO should

- * Publish on a regular basis, perhaps every six months, a summary of major positions that represent program policy.

- * Indicate how activities carried out since the last report have been either consistent or inconsistent with those positions.

3. To improve the quality of its interaction with all Nevada citizens, whether for or against Yucca Mountain, NWPO should

- * Include training that stresses the importance of candor and the differences between "one" and "two" way communications.

- * Make career advancement and promotion dependent on successful demonstration of the capability to interact positively with a wide range of sectors in the public, including contingents favorable to Yucca Mountain.

- * Establish mechanisms to solicit and incorporate feedback from various sectors, both pro and con, on the training program's effectiveness.

- * Require NWPO contractors to conduct equivalent training for their employees. Their performance evaluations and awards would be structured to include contributions to the overall public involvement effort.

4. To make public involvement a means for creating partnerships, NWPO should

- * Develop initiatives to ensure that a broad range of stakeholders, pro Yucca Mountain as well as anti, are involved in the decision-making process beginning at the pre-decisional stage and continuing through NWPO'S ultimate policy implementation.

- * Create and rigorously enforce procedures that produce thoughtful and specific responses to public comments.

- * Obtain and use advice from citizens and DOE about what policy alternatives should be analyzed and evaluated.

5. To make NWPO's scientific work even more credible, it should

- * Expand to the maximum extent possible NWPO's peer review network to include experts from within Nevada.

- * Jointly design and conduct experiments and share data at the earliest possible time with teams from DOE.

- * Seek authorization for joint auditing of NWPO's quality assurance programs.

- * Be prepared to "bend over backwards" to address and resolve, if possible, plausible scientific arguments that might arise over the life time of the waste management programs that are favorable to the project.

- * Allow DOE and its subcontractors to nominate, subject to negotiated preconditions, individuals who would participate in exercises that elicit "expert judgements" that are often employed in safety and risk analyses.

- * Clarify carefully and publicly the reasons when advice from technical overseers, such as University of Nevada Las Vegas, University of Nevada Reno and Desert Research Institute are not accepted.

6. *To empower Nevada's citizens, affected communities and tribes, and citizen groups, NWPO should*

- * Offer pre-decisional involvement that includes review of methodology, data validity, and premises underlying analyses.

- * Scrupulously comply with all Federal regulations that are administered even-handedly, specifically FAR and 10 CFR 600-436 regarding limits on public relations lobbying and the need for competitive bidding on contracts..

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED BY NWPO

1. *To make sure a stakeholder in the Nevada community is served, NWPO should*

- * Expand the local presence of key decision-makers so as to ensure greater public access to them.

- * Require full-time residence for all employee, contractor personnel and consultants working on the project for the State of Nevada.

- * Favor local industries and firms as sources for supplying consulting services to NWPO.

- * Obligate the providers of research to live as near as possible to Southern Nevada.

2. *To further become a good citizen in the area where it is overseeing the repository, NWPO should*

- * Make good faith efforts to keep all commitments made even if that might facilitate the Yucca Mountain schedule.

INTERNAL OPERATIONS AND PROGRAMMATIC CHOICES

When the various segments of the public gain access to programs, they should discover internally activities that increase institutional trustworthiness, not decrease it. In general, NWPO should commit itself and require its contractors to:

- * Maintain a high level of professional and managerial competence, continually honed by rigorous training in the technical field for which they were hired.

- * Develop tough internal process for reviewing and discovering internal processes open to all Nevadans.

- * Reward honest self-assessment, even if it is critical of NWPO.

- * Establish and meet technical performance measures that are dictated by the project's intrinsic scientific requirements.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS NWPO.

1. To promote a "new non-confrontational culture" within NWPO, it should

- * Consider the deployment of "truth and confidence" tiger teams that would regularly evaluate how different units performed.

- * Disseminate experientially derived "best practises" for building and sustaining trust.

2. To ensure that the public trust and confidence implications of critical NWPO activities have been properly identified and weighed, NWPO's director should

- * Order that any analysis of policy options presented to him or to staff include an explicit assessment of the impact on trust and confidence for various segments of the public.

- * Support efforts to increase the objectivity of those assessments over time.

- * Require a sound explanation for the recommendation of an option that is likely to substantially weaken the trust and confidence of any significant segment of the public, even those who are pro Yucca Mountain.

- * Publish that explanation along with a plan for mitigating the causes of lower trust and

confidence.

- * Review the predicted effects for degree of consistency with actual public reactions. Publicize such reviews both for internal managerial purposes and public understanding.

3. To ensure that organizational dysfunctions are not responsible for decreased institutional trustworthiness, NWPO should

- * Institute overlapping self-regulatory processes.

- * Reward the discovery of error.

4. *To ensure that central and crucial technical issues are well ventilated, NWPO should*

- * Create competing teams of technical and scientific experts to peer review each others' work. (Faculty at a Nevada university should perform this role.)

- * Make their critiques public.

- * Provide incentives (resources, prestige, etc.) if they persuade the broader expert community of the soundness of their arguments.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED BY NWPO

1. *To demonstrate its commitment to taking into account the interests of the citizens of Nevada, NWPO should*

- * Undertake public and private initiatives to initiate a dialog with DOE officials.

- * Be forthcoming with respect to what they seek, but offer as part of the bargain appropriate conduct from the State into the relationship.

- * NWPO should not condition its offer on the DOE dropping its support for characterization of the Yucca Mountain site.

2. *To acknowledge by deeds that the "first-of-a-kind" nature of Yucca Mountain requires special attention to public trust and confidence, NWPO should*

- * Aim to help DOE design a repository system whose predictable performance exceeds by a substantial margin the standards set up by regulators.

- * Help assure performance claims made to the public are accurate.

- * Not promote the mistaken impression that Yucca Mountain is beyond the experimental mode.

3. *To acknowledge the symbolic and real barriers to trust and confidence that arise when NWPO inflates the dangers of the repository beyond reasonable, NWPO should*

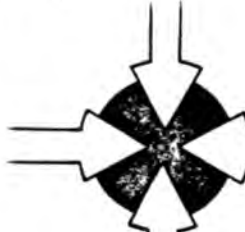
Support the research and development of Yucca Mountain as well as alternative technologies for disposing radioactive waste.

- * Acknowledge that the primary driving force behind the Yucca Mountain program is the need to solve a serious national problem, not an attempt by DOE to "Screw Nevada".

Arnie Wight
President
Principled Negotiations, Inc.
Amherst, New Hampshire

3/11/93

No substantive suggestions for improving the Draft Final Report.



PRINCIPLED NEGOTIATIONS, INC.

March 11, 1993

Dr. Daniel Metlay
SEAB Task Force on Radioactive Waste Management
1000 Independence Avenue SW
Washington, DC 20585

Dear Dan,

Thanks for the Draft Final Report. It represents dedication to fulfilling Admiral Watkins' charge and has brought forth a grand comprehensive list of ideas that must be studied by the new Secretary and her entire leadership team. The training programs recommended need to be installed and followed through by an Assistant Secretary. The report will serve the new Secretary well despite the skepticism of an academic and intellectual analysis that colors the document.

Even as a pragmatic idealist I perceive the responsibility and success of your recommendations will be difficult and of long duration; however, "faith is the substance of things hoped for, the evidence of things not seen."

Congratulations on the success of the Task Force.

Cordially and sincerely,

ARNIE

Arnie Wight

P.S. I've sent Tom Grumbly (nominated as an Assistant Secretary of Energy) a copy of your report and "Ensuring Public Trust and Confidence" from the National Academy of Public Administration.

Christine Van Lenten
Putting Words to Work
St. Petersburg, Florida

1/30/93

The Task Force agrees with many of the ideas advanced in this comment including the notion that bureaucratic and organizational behaviors, such as the "fear of losing control of the program" make it harder to act in ways that sustain trustworthiness. The panel also agrees that "management by improvisation" can sacrifice trust and that it is "risky" not to integrate stakeholders into planning and decision-making. The group, however, does not share the view that the managerial reforms proposed in the comment are the key to strengthening public trust and confidence, although they may well be a part of a more comprehensive approach.

The decline the Department has experienced, the Task Force believes, can be traced to a complex interaction of a number of factors that define the institutional context within which the two waste management programs operate. Some of those factors are within the Department's control and the impact of the others can be moderated by actions DOE can take. Only if the Department engages all of them is it likely to succeed in strengthening public trust and confidence.

Putting Words To Work

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Telephone: 813-399-8873; Fax: 813-391-9887

January 30, 1993

Dan Metlay, Director
SEAB Task Force on Radioactive Waste Management
U. S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Dear Dr. Metlay:

Your report on public trust and confidence is heroic in its scope and thoughtfulness. I hope it will be widely and closely read. However, your draft politely skirts a managerial issue that goes to the heart of OCRWM's problems with its stakeholders.

As a former contractor to OCRWM, I know first-hand that it has many talented and dedicated managers—people I felt lucky to work for. If these good people have not run the kind of open program you advocate, it must be for a good reason. I believe that reason is their fear of losing control of the program they are accountable for, and that the root of their fear is the insecurity they feel because they are not in command of their decisionmaking process. This insecurity breeds the defensive, close-to-the-vest mentality that in turn breeds behaviors that erode trust.

These behaviors appear dysfunctional when viewed against the goal of earning trust; but they are highly functional when viewed against the goal of maintaining the only control OCRWM's managers enjoy: an illusory control that does not bear close scrutiny. Management by improvisation is a high-wire act that would make anyone nervous.

I believe OCRWM's managers are not in command of their decisionmaking for three closely related reasons: 1) they have been a kind of stepchild of the Department, operating without the full support and understanding of their own management, in a volatile political climate; 2) they have not done the difficult work of explicitly articulating decision-management plans that could provide a compass for their own efforts and for the efforts of stakeholders; and 3) in one crucial respect, they tend to misconceive their own roles.

The new Administration may or may not remedy the stepchild problem; I want to address the problems of decision management and role definition, because they're problems OCRWM can start to remedy, right now.

OCRWM abounds in plans, so let me stress that this problem turns on a crucial distinction: the difference between, on the one hand, detailed charts of milestones and activities, convergence diagrams, strategy papers, and action plans; and, on the other, a clearly defined decision-management plan arrived at through a healthy consultative process. The rationale for the latter is simple: 1) managers get their work done by way of making decisions, and must therefore *manage* the work of making decisions, 2) stakeholder involvement is vital to that work, and 3) the more widely that plans for managing decisions are understood, the healthier the working environment for all parties.

Given the uncertainties plaguing OCRWM's program, its decision-management plans could not be very elaborate; and they should be flexible, allowing managers plenty of room to exercise judgment. But in consultation with stakeholders, OCRWM could articulate its decision path to, or toward, a few key program goals. At the least, it could define the process by which it intends to articulate a path.

Obvious candidate areas—closely related—are: By what process is OCRWM going to determine 1) whether/how to attempt to site an MRS? 2) in the absence of an MRS, what responsibility the Federal government should assume for utilities' storage problems? 3) in the case of an MRS, what equipment and facilities should be developed to transport/store/dispose of spent fuel? Other candidate areas: What is the decision path to 1) the determination of Yucca Mountain's suitability (and how, along the way, are decisions being made to allocate resources among myriad site-characterization activities?) 2) permanent disposal of defense-waste? And, long-overdue for scrutiny: What is the most sensible way of generating and using cost estimates for a program built on such shifting, fragile, and cost-sensitive assumptions?

To the extent possible, for each area a decision-management plan would indicate:

- What key decisions managers must make (both technical and institutional), and why each is significant.
- How key decisions will be sequenced/how they are interrelated.
- By whom each decision will be made, and by what target date each is needed.
- What significant uncertainties surround each decision, and what levels of certainty it's reasonable to aim for, given constraints of time and money.

- What information is needed to reduce uncertainties and support decisions, and from what sources it will be sought.
- At what points managers will seek stakeholder involvement in the continuing work of formulating issues and making decisions.
- What forms this involvement will take (lunch? workshops? rulemaking?)
- How each decision will be memorialized, so that a paper trail documents the reasoning that supports it, and stakeholders can learn how their views were considered.

Presented in a form that was easy to understand, these plans would be working documents consulted frequently by both managers and stakeholders.

Why wouldn't an agency want to develop such plans? In fact, don't OCRWM's managers already know these things? Can't they just write them down on some pieces of paper we can all look at? Unfortunately, developing decision-management plans for a complex, dynamic program is not easy; and even if much of the groundwork were laid, it would be argued that committing to a series of stakeholder interactions in the face of significant uncertainties would foreclose managers' options.

But hard as it may be to develop such plans, managing a program absent them is even harder—*particularly* for a program in flux. Management by improvisation, which appears to permit managers to keep their options open, sacrifices not just trust, but efficiency: instead of being focused constructively, the human energies within the community of managers and stakeholders—a tremendous resource that should be harnessed in problem-solving—are dissipated or turned to unproductive conflict.

For OCRWM, the case for at least modest decision-management planning comes down to some simple realities:

- The very process of planning is a valuable tool all parties can use to think about the future ("planning as learning"), and thereby help create the future, improve that future, legitimate that future. It can also help all parties better understand each others' views, and thereby plan their own participation more effectively.
- Skillful managers can help all parties understand that OCRWM's plans are necessarily provisional; as much to be worked *against* as from. They can be clear about what rough level of confidence a particular plan enjoys, and they can unapologetically modify their plans whenever they have a good reason to.

- What's risky is *not* integrating stakeholders into planning and decisionmaking. If an issue is making you uncomfortable (fee adequacy?), it's a sign that you need to go find some stakeholders to talk it over with, soon. That won't necessarily make controversy go away; indeed, it may make it more explicit. But not until issues are explicitly articulated is there any hope of their being fully understood and addressed.

This last point goes to the problem of role-definition. To function effectively, OCRWM's managers need the security of knowing exactly what it is that they are accountable for. You make the crucial but narrow point on page 43 of your report that OCRWM must make clear that its repository program is in an experimental mode. But the point is much, much larger.

What OCRWM's managers are accountable for, finally, is not implementing the law exactly as it was written; legislators aren't god-like enough to write perfect laws that will remain perfect in a changing world. (Section 301[a][3] of the original Nuclear Waste Policy Act clearly acknowledges this, charging the Secretary to recommend legislation to resolve problems that he discovers are impeding implementation.)

Rather, managers are accountable for taking an imperfect law, marshalling all possible resources, making the most diligent efforts to implement the law as written, and thus using that law as a tool for discovery. What managers must discover is the nature of the realities inherent in their fundamental mission, and how best to deal with them.

If OCRWM's managers viewed their role in this light, perhaps they could relax enough to perceive stakeholders as the indispensable partners they are. Together, then, through sometimes contentious but much more productive dialogue, all parties could determine: 1) to what extent the law as written *is* implementable, and 2) to the extent that it's not, how it can be strengthened. When implementation is approached not defensively, but in a spirit of discovery, getting to "no" becomes as important as getting to "yes," because that "no" can help us better understand what we need to do to get to "yes." Decision-management planning helps define that path through "no" to "yes."

I'm not saying that such planning is a magic bullet. I am saying that, without even the rudiments of it, OCRWM's task, hard under the best of circumstances, is made much harder. I'm therefore curious to know how you evaluated the managerial dimensions of the trust-and-confidence problem.

Did you ask to see OCRWM's plans for managing its key decisions, and in particular, stakeholder involvement in those decisions?

If you asked, and were given any documents in return, may I have a copy?

(Ironically, former-Secretary Watkins' unilateral decision to essentially abandon voluntary siting for an MRS is an instance of the very syndrome he crusaded against. With whom did he consult? Evidently not at all with the quite-astonished Nuclear Waste Negotiator, with whom his Department had been slow-dancing for so long. Perhaps you should mention this cautionary tale, too.)

I'd be glad to talk with you about this subject, which I hope you'll address in your final report. Your "Implementation" section (page 44) looks like the right place for it to me.

Yours truly,

A handwritten signature in cursive script that reads "Christine Van Lenten". The signature is written in dark ink and is positioned above the printed name.

Christine Van Lenten

cc: Dan Reicher, Natural Resources Defense Council
Tom Isaacs, OCRWM
Jerry Saltzman, OCRWM



**Attorney General
Lee Fisher**

June 30, 1993

Dr. Daniel Metlay
U.S. Department of Energy
1000 Independence Ave., SW
AC-1, Room 7B-198
Washington, D.C. 20585

Post-It™ brand fax transmittal memo 7871		# of pages »
To <i>Dr. Dan Metlay</i>	From <i>Jim Payne</i>	
Co. <i>DOE</i>	Co. <i>Ohio AGO</i>	
Dept.	Phone # <i>614 466-2766</i>	
Fax # <i>202 586-3497</i>	Fax #	

Dear Dr. Metlay:

Thank you for the opportunity to comment on the proposed final report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management, entitled *Earning Public Trust and Confidence: Requisites for Managing Radioactive Waste* (June 1993). The Foreword states that the purpose of the report is "to consider what steps the Department could take to increase public trust and confidence." The proposed report finds at pages 29 and 46 that state and federal environmental regulation of hazardous waste at DOE facilities has increased public trust and confidence.

We urge the Task Force to recommend that DOE be receptive to legislation providing for environmental regulation of all radioactive waste and pollution at DOE facilities. DOE is the nation's largest generator of radioactive waste and pollution. DOE has an unprecedented legacy of radioactive contamination at its facilities. DOE claims, however, that no one else can regulate most of its day-to-day management of radioactive waste and pollution, including:

1. discharges of radioactive water pollution into the nation's waterways and ground water;
2. disposal, storage and treatment of low-level radioactive waste;
3. storage and treatment of transuranic waste;
4. storage and treatment of high-level radioactive waste and spent nuclear fuel waste.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

Spring Meeting
March 28-30, 1993
Washington, D.C.

RESOLUTION

REGULATION OF RADIOACTIVE WASTE AND POLLUTION

WHEREAS, federal environmental statutes such as the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act all contain detailed and objective human health and environmental regulatory standards, explicit citizen suit enforcement mechanisms and mechanisms for state and citizen participation in federal regulatory decisions; and

WHEREAS, federal environmental statutes also contain provisions explicitly requiring compliance by federal facilities with all applicable environmental regulations and preserving state authority to regulate more stringently than the federal government; and

WHEREAS, the Atomic Energy Act of 1954 and other federal nuclear statutes in most instances do not have these provisions to control radioactive waste and pollution; and

WHEREAS, management of radioactive waste and pollution at federal facilities, including the vast federal nuclear weapons complex, represents a significant priority with respect to protection of public health and the environment, and many of these facilities are not currently regulated by the federal government and have been found by various courts to be beyond the scope of state regulation; and

WHEREAS, in 1990 the NGA-NAAG Task Force on Federal Facilities concluded in its report, *From Crisis to Commitment: Environmental Cleanup and Compliance at Federal Facilities*, that federal environmental statutes should regulate radioactive waste and pollution, under a complete waiver of federal sovereign immunity; and

WHEREAS, in 1991 the Congressional Office of Technology Assessment concluded that Congress should regulate radioactive waste and pollution at U.S. Department of Energy facilities to improve cleanup prospects and prevent future contamination; and

WHEREAS, in 1989 the U.S. General Accounting Office found that the lack of federal regulations governing radioactive waste at private facilities resulted in on-site dumping and extensive contamination at many of these facilities; and

WHEREAS, federal control of radioactive waste and pollution has generally not kept pace with federal control of hazardous waste and non-radioactive pollution, and this lag has a direct impact on the ability of states to protect the health and welfare of their citizens; and

WHEREAS, the National Association of Attorneys General consistently has worked in support of its previous positions to preserve state authority to regulate certain radioactive waste and pollution and to require compliance of all federal facilities, including nuclear facilities, with all environmental regulations;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1) Urges Congress to take appropriate action to establish a statutory scheme for radioactive waste and pollution that is as protective of human health and the environment as existing federal environmental statutes are for hazardous waste and non-radioactive pollution. The resulting actions should include but not necessarily be limited to the following

- a) Directing promulgation of regulations protecting human health and the environment consistent with existing federal environmental statutes, including regulations requiring the use of pollution control technologies and waste management practices;
- b) Requiring federal facilities to comply with the statutory and regulatory requirements, with a complete waiver of federal sovereign immunity;
- c) Preserving state authority consistent with existing federal environmental statutes controlling hazardous waste and non-radioactive pollution;
- d) Allowing citizen suit enforcement, public participation in regulatory agency decision-making, and public access to regulatory agency information consistent with existing federal environmental statutes; and
- e) Coordinating regulatory responsibilities for federal agencies to avoid duplication and gaps in the regulation of radioactive waste and pollution; and

2) Urges the Administration and appropriate federal agencies to consult with Governors, Attorneys General, and other affected state officials when considering legislation, executive reorganization orders, regulations or policies concerning the management of radioactive waste or pollution; and

3) Authorizes the NAAG Environment Legislative Subcommittee to undertake a dialogue with key members of the Administration and Congress, and to report back to the NAAG membership on a timely basis; and

4) Authorizes its Executive Director and General Counsel to transmit this resolution to the appropriate members of the Administration, Congress and to other interested associations and individuals.

BACKGROUND STATEMENT

Resolution on Radioactive Waste and Pollution

The Atomic Energy Act of 1954, as amended (AEA) is intended to facilitate the development of atomic energy and other uses of nuclear materials for military and commercial purposes. The AEA has been amended sporadically, attempting to address various radioactive waste problems. Congress has passed the Uranium Mill Tailings Control Act of 1978 (UMTRCA), the Nuclear Waste Policy Amendments Act of 1987 (high-level radioactive waste and spent fuel waste) and the Low-Level Radioactive Waste Policy Amendments Act of 1985.¹ However, the basic structure of the AEA and the other federal nuclear statutes has remained unchanged despite the passage of nearly four decades of nuclear regulation. The federal nuclear statutes do not generally provide for the control of radioactive waste and pollution² in a manner which is as comprehensive or potentially as protective of human health and the environment as existing federal environmental statutes.³ The proposed resolution addresses this concern and recommends changes which will allow the regulation of radioactive waste and pollution to keep pace with modern federal environmental legislation.

Environmental legislation such as the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Act and Comprehensive Environmental Response, Compensation and Liability Act all contain detailed and objective public health and environmental standards as well as specific directives to the Environmental Protection Agency (EPA) concerning how to achieve and enforce those standards. These statutes allow for extensive state and citizen involvement in government decision-making and enforcement, provide for explicit state authority to regulate more stringently than the federal government regardless of whether a state agrees to regulate in lieu of the federal government, and expressly establish a private right of action for states and the public to enforce regulations directly against polluters or to require specific action by the federal government (citizen suits). Finally, these statutes require that federal facilities comply with environmental regulations in the same manner as private and other government facilities.

¹ The proposed resolution does not address the Low-Level Radioactive Waste Policy Amendments Act of 1985, which provided for states to develop disposal facilities for this waste. The resolution only urges that environmental regulation of low-level radioactive waste be consistent with regulation of hazardous waste and pollution under federal environmental statutes.

² Radioactive pollution includes radioactive air and water pollution. Radioactive waste includes low-level radioactive waste, uranium mill tailings, transuranic waste, high-level radioactive waste and spent fuel waste.

³ There are some limited exceptions. For example, UMTRCA preserves some state authority over uranium mill tailings. Also, the Clean Air Act regulates radioactive air emissions, although it allows some regulatory authority to revert to regulation under the AEA.

By contrast, federal nuclear statutes, except in limited circumstances, do not provide the Nuclear Regulatory Commission (NRC) or EPA with sufficiently detailed and objective directives or standards for protection of public health and the environment. The AEA, for example, sets up a program of federal government control of atomic energy development and other uses of nuclear materials which provides for little state and citizen involvement in federal government decision-making and enforcement. The NRC interpreted the AEA as affording states with only limited authority to regulate radioactive waste and pollution through the "agreement state" program (covers only 29 states). Furthermore, various courts have found that federal nuclear statutes preempt state authority to regulate in certain areas relating to radioactive waste and pollution, thereby potentially impeding the ability of states to protect the health and welfare of their citizens. There are no explicit provisions for citizen suits under the federal nuclear statutes. Finally, much of the radioactive waste and pollution at federal facilities is unregulated by the federal government, and has been found by various courts to be beyond the scope of state regulation.

The Attorneys General have been involved over the last several years with various issues concerning the control of radioactive waste and pollution. In early 1990, NAAG adopted a resolution urging Congress to preserve state authority over radioactive air pollution under the Clean Air Act. Later in 1990 NAAG also passed a resolution urging Congress to preserve state authority over radioactive wastes and materials deemed "below regulatory concern" by the federal government. Congress adopted key components of both these NAAG positions into law.

With respect to federal facility compliance, in 1990, the NAAG-NGA Task Force on Federal Facilities recommended that "Congress should amend applicable federal laws to ensure that all wastes, including nuclear, are within the purview of state and EPA authorities," and "should . . . clearly waive federal sovereign immunity" from these laws.⁴ This was followed by a 1991 report by the Congressional Office of Technology Assessment which documented severe radioactive contamination at numerous U.S. Department of Energy facilities, and concluded that Congress should "eliminate self-regulation by DOE over radioactive waste management" in order to "improve cleanup prospects" and "prevent future contamination."⁵ In a similar vein, in 1989 the U.S. General Accounting Office found that the lack of federal regulations governing radioactive waste at private facilities resulted in on-site dumping and extensive contamination at many of these facilities.⁶

⁴ NAAG-NGA Task Force on Federal Facilities, *From Crisis to Commitment: Environmental Cleanup and Compliance at Federal Facilities* (Jan. 1990)

⁵ U. S. Congress, Office of Technology Assessment, *Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production*, OTA-O-484 (Washington, D.C.: U.S. Government Printing Office, February 1991), at 15, 42, 131.

⁶ Testimony of Keith O. Fultz, U.S. General Accounting Office, before the House Subcommittee on Environment, Energy and Natural Resources, August 3, 1989, GAO/T-RCED-89-570.

Building on these previous positions of NAAG, in 1992, Attorney General Humphrey, Chair of the NAAG Environment and Energy Committee, appointed General Fisher to chair a staff working group to review generally the adequacy of environmental regulation of radioactive waste and pollution under the Atomic Energy Act of 1954 and other federal nuclear statutes. Seventeen offices of Attorneys General participated in what was entitled the NAAG Atomic Energy Act Work Group: Alaska, Colorado, Connecticut*, Florida, Illinois, Michigan, Minnesota, Nebraska, Nevada*, New Jersey, New Mexico, New York*, North Carolina, Oklahoma, Ohio*, Texas and Wyoming.⁷

⁷ *Members of Steering Committee

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

**Spring Meeting
March 28-30
Washington, D.C.**

RESOLUTION

URGING THE CONGRESS TO CLARIFY THE WAIVER OF FEDERAL SOVEREIGN IMMUNITY UNDER THE CLEAN WATER ACT

WHEREAS, a significant number of the most dangerous sources of water pollution in the United States that pose a significant threat to public health and the environment are located at federal facilities; and

WHEREAS, federal facilities are among the worst violators of federal and state water pollution laws; and

WHEREAS, Executive Order 12088 requires all federal agencies to comply with all applicable pollution control standards; and

WHEREAS, the states have experienced significant problems in bringing federal facilities into compliance with federal and state water pollution laws because the federal facilities refuse to acknowledge state regulatory authority over their facilities; and

WHEREAS, disputes over state environmental authority at federal facilities has caused costly, time-consuming and acrimonious litigation between the states and the federal agencies; and

WHEREAS, the U.S. Environmental Protection Agency's and the states' lack of clear enforcement authority has eroded the public confidence in the federal government's willingness and ability to address the serious water pollution problems at the federal facilities; and

WHEREAS, the states' role in enforcing federal and state water pollution laws against recalcitrant federal agencies has become more important because of the U.S. Department of Justice contention that the Constitution prohibits EPA from enforcing water pollution laws at federal facilities and from imposing sanctions against federal agencies; and

WHEREAS, federal agencies must be subject to the same sanctions as private industry, states, and local governments for violations of federal and state water pollution laws to deter violations of and ensure compliance with these laws; and

WHEREAS, the U.S. House of Representatives is considering HR 340, which would clarify the federal sovereign immunity waiver under the Clean Water Act;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1) urges Congress to adopt H.R. 340 or similar legislation which would:

a) provide clear authority to federal, state and local officials. enforce water pollution programs at federal facilities;

b) subject federal agencies and federal facilities to the same accountability, procedural, and substantive enforcement provisions and reasonable service charges that apply to state and local governments and private industry; and

c) enhance proper water pollution control practices at federal facilities in the future by ensuring that federal agencies comply with federal, state and local water pollution laws; and

2) authorizes the NAAG Environment Legislative Subcommittee to represent the views of the Association on this matter before the Congress and federal agencies.

3) authorizes the Executive Director and General Counsel to transmit this resolution to the President and EPA Administrator Carol Browner and appropriate members of her staff; Secretary Les Aspin of the Department of Defense; Secretary Hazel O'Leary of the Department of Energy; Congress; and other interested associations.

LUTHER J. CARTER
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June 23, 1993

Professor Todd La Porte,
Chairman, Secretary of Energy's Task Force on Public
Trust and Confidence in Radioactive Waste Management
3207 Andreasen Drive
Lafayette, California 94549

Dear Todd,

I have read with interest the final report of your task force, together with the comments made by reviewers on the previous report. As I indicated in my own earlier comments, while finding the report to be very good as far as it goes, I think it should go further. Here I would propose that the body of the report be left essentially just as it is, but that the "implementation of advice" section be strengthened in so far as it pertains to the Yucca Mountain project in Nevada.

As the report now stands, it does not come to terms with the fundamental objection raised by Robert Loux of the Nevada Nuclear Waste Project Office in his letter to the task force of last December 18. His objection had to do with the report's "failure to address directly the implications" for public trust and confidence of attempting "to force the repository on an unwilling state." As you know, I personally take no exception to what Congress did in the Nuclear Waste Policy Act Amendments of 1987 except that I think, and once recommended (see Environment October 1987), that Congress should have at first designated Yucca Mountain as the sole candidate site only tentatively, subject to review by the National Academy of Sciences. I do agree however with the task force's observation that most of the "bargains" struck in the NWPA of 1982 were undone by the 1987 Amendments.

The need today is to somehow refashion those original bargains in new legislation and policies that are workable and that reflect the country's hard-won experience about the political and technical realities of isolating and containing the more dangerous and longer-lived nuclear materials. For purposes of illustration let me give you some of my own thoughts on this subject. In my judgment Congress should:

* Declare the Nevada Test Site (with the NTS boundaries extended to take in all of the Yucca Mountain site) to be a unique federal reservation that is to be dedicated in part to the storage and disposition of hazardous, long-lived nuclear materials from all sources--the generation of nuclear energy,

the production of nuclear explosives, and the dismantling of nuclear warheads. The bargain here would be that in return for the heavy investment of ratepayer and taxpayer funds the storage and disposition of these hazardous nuclear materials is indeed going to be accomplished, even though it may have to be done by means not yet fully known or decided. The beneficiary would be the nuclear industry, the nation at large, and generations to come. Congress need not be apologetic about such a declaration. The NTS is in fact unique in its history; its geology, hydrology, and climatic setting; and its remoteness from major population centers and tradition of tight security.

* Recognize that central to any project for isolation of longlived, highly radiotoxic nuclear materials is the problem of dealing convincingly with uncertainty. This problem is not sufficiently recognized, indeed far from it, by the existing law and DOE program. The best solution, in my view, would be a new law and program pointing toward underground retrievable storage and a major new emphasis on redundancy in the overall containment system (e.g., through highly robust, long-lived casks). The Yucca Mountain project would, to this end, be redefined as an exploratory endeavor, which while not necessarily open-ended would not be cramped by tight or inflexible schedules. This would be a refashioning of the technical bargain referred to in the task force report, with conservatism in design and a philosophy of keeping all options open taking the place of a politically illusory commitment to finding the best among multiple sites.

* Declare that within the foregoing policy framework, the state of Nevada is to be a major partner in the exploration and development of the Yucca Mountain site and in any other activities related to storage or disposition of hazardous nuclear materials at the NTS. This partnership would be not nominal but real, with the powers and prerogatives vested in the state such that in many matters state and federal officials would be on an equal footing. In these circumstances the extensive behavioral reform contemplated in the task force report could, to a degree, be made self-enforcing and indeed be made to survive DOE itself, should the department follow its predecessors into the bureaucratic boneyard. This commitment, along with what follows below, would represent a reshaping of what your report refers to as the political bargain with the host state.

* Declare that the NTS is to be made a preferred site for new federal-state ventures in high technology, some of them related to storage and disposition of hazardous nuclear materials (e.g., a state-of-the-art reactor for "burning" warhead plutonium) and some not. This should be much more than a rhetorical commitment that might soon prove to be an empty box as other states, politically more powerful and influential, grab off for themselves attractive high-tech projects to be sponsored or

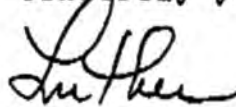
initiated by the government. The commitment should be genuine and in some measure self-implementing, as perhaps through the establishment of a "Nevada Technology Development Trust" from income generated by the Nuclear Waste Fund.

Your task force has neither the mandate nor the inclination to outline as I have above even the general terms of a refashioning of the bargains struck in 1982. But it would lend sharpness and force to your analysis and recommendations if the report were, in its conclusions, to acknowledge the need for such a refashioning (a need which I believe is implicitly recognized in the report even as now written). Your thoughts as to an appropriate refashioning might be rather different from my own, but whatever they are you might usefully indicate the direction in which they lie.

As a parting observation, I would like to suggest that the idea of looking for ways to make your recommendations self implementing or self enforcing deserves strong emphasis. The genius of the National Environmental Policy Act was NEPA's enforceable requirement for environmental impact statements; without that requirement NEPA would have been soon forgotten as just another hortatory declaration of high-minded goals. Inspired by Lynton Caldwell's seminal report to a Senate committee, NEPA was something of an earthquake in its impact on the way government agencies do their business. I don't see much chance of your report producing any widely-felt seismic events but you might reasonably hope (as I know you do) to shake things up at DOE.

I don't know whether these remarks will be helpful to you. But I can say that your report, and my reflections on it, have been quite helpful to me and will be reflected in my own writing on what to do about hazardous and longlived nuclear materials.

Sincerely yours,



Luther J. Carter