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U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, D.C. 20585-0119

**RE: Notice of Intent to Prepare an Environmental Impact Statement for the Disposal of Greater-Than-Class-C Low-Level Radioactive Waste. 72FR140, July 23, 2007, pp. 40135-40139.**

Eureka County, Nevada, is an “affected unit of local government” under Section 116 of the Nuclear Waste Policy Act as amended. We are pleased to provide the following comments on DOE’s July 23, 2007, Notice of Intent to Prepare an Environmental Impact Statement for the Disposal of Greater-Than-Class-C Low-Level Radioactive Waste.

Our interest in the Notice of Intent focuses on the potential use of the proposed high-level waste repository at Yucca Mountain as described in the Notice.

### **Background**

Of the five alternatives proposed for evaluation in the NOI, sites in Nevada are featured in three. Alternative 3 would have disposal take place at the potential high-level nuclear waste repository at Yucca Mountain. Alternative 4 includes disposal in a new enhanced near-surface facility, possibly located at the Nevada Test Site. And Alternative 5 includes disposal at a new intermediate depth borehole facility, possibly located at the Nevada Test Site.

## The status of Yucca Mountain

The federal government is still years away from determining whether Yucca Mountain is geologically and technically suitable, safe, and able to be licensed for the disposal of spent nuclear fuel and high-level radioactive waste. The same uncertainties about the Yucca Mountain site apply to its use for GTCC waste disposal. Similarly, many of the same conditions that bring into question the safety of Yucca Mountain are also present at the NTS (i.e., active seismic area; fast groundwater pathways; potential for renewed volcanism; highly corrosive subsurface environment; etc.). In addition, there are serious issues with cumulative impacts to the environment from past weapons testing activities and resulting contamination and current and planned low-level and mixed-low-level waste disposal activities.

Alternative 3, involving Yucca Mountain, is not a realistic alternative for consideration in the planned EIS. Under DOE's current most optimistic schedule, it will not be known whether a Yucca Mountain repository is permitted to accept spent nuclear fuel and high-level radioactive waste until at least 2017. The Nuclear Regulatory Commission license, if granted, would require amendment to accept GTCC and GTCC-like waste. This alternative assumes that Yucca Mountain will be licensed as a repository and creates a potential conflict of interest for both the NRC, which will be a commenting agency for the GTCC EIS, and the EPA, which will be a cooperating agency (p.40136). EPA has yet to complete setting the environmental, safety and health standards for a Yucca Mountain repository, and NRC has yet to finalize its rules for evaluating a DOE application for a repository license at Yucca Mountain. NRC must rule on whether the EPA standard will be met if DOE submits a Yucca Mountain license application.

Alternative 3 assumes that the Nuclear Waste Policy Act, as amended, authorizes the use of a Yucca Mountain repository for disposal of GTCC and GTCC-like waste. While the 2002 Yucca Mountain EIS considers these wastes in one of its options for extended use of the repository if the statutory capacity limit is repealed or increased, it does not explicitly consider the question of statutory authority for disposal of these wastes at Yucca Mountain.

As a downwind county during the nuclear weapons tests at the Nevada Test Site, Eureka County is very concerned about the possible aftereffects. The EIS must include a comprehensive cumulative impacts analysis of all related activities in the area, and discuss the potential for resulting contamination from past activities.

## **Lifecycle Costs**

The EIS should identify the estimated lifecycle costs for each of the alternatives evaluated. Given the long-term hazards to human health and the environment posed by GTCC waste, DOE should demonstrate the true long-term costs for maintaining in-perpetuity control of a single disposal site and/or multiple sites considered for GTCC wastes and potentially other “high activity” low-level wastes managed by DOE.

## **Regulatory issues must be resolved**

By law, a GTCC facility must be regulated by the NRC. Inclusion of DOE’s GTCC-like wastes that currently are managed under DOE Orders and stored at DOE facilities that operate under DOE Orders, will require that they be brought into the NRC regulatory regime. This is not a simple process, as evidenced by the high-level waste program where the decision was made to co-mingle commercial and defense waste. Resolution of waste characterization, institutional, and security issues should be described in the EIS. The EIS should describe how an NRC-regulated facility can co-exist with a DOE self-regulated facility, or an EPA/state regulated facility, such as WIPP, and how the public can be assured that the NRC regulatory authority has primacy at the GTCC facility.

## **Transportation of GTCC Waste**

Any NEPA analysis addressing disposal of GTCC waste must thoroughly describe the transportation of such waste from generator/storage sites to proposed disposal facilities. All impacts associated with such transportation must be fully assessed including considering these shipments cumulatively in addition to the other types and quantities of shipments destined for each location under consideration.

## **Conclusion**

We continue to see the proposed nuclear waste repository at Yucca Mountain considered in plans and documents as if it is already approved and operating. Yet the federal government is still many years away from that becoming a reality. We believe that it is premature to consider the proposed Yucca Mountain repository as a solution for more kinds of waste when it has yet to be proven or licensed for its primary mission.

If you have questions, please contact me.

Sincerely,

*Abigail C. Johnson*

Abigail C. Johnson  
Nuclear Waste Advisor

cc: Ronald Damele, Eureka