

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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December 11, 2013

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

Dear Secretary Moniz:

Since you testified before the committee on July 31, 2013, the United States Court of Appeals for the D.C. Circuit has issued two decisions regarding implementation of the Nuclear Waste Policy Act. We are writing to request information on DOE's actions to implement these recent court decisions and better understand the extent to which DOE intends to comply with the law.

During your testimony, you were asked about the D.C. Circuit case pending at the time: *In re: Aiken County*. You testified: "...I assure the Committee, and as the Administration has spoken, that whatever the ruling is, we will act appropriately and help to carry it out." Two weeks later, on August 13, the court granted the petition for a writ of mandamus, compelling the Nuclear Regulatory Commission to resume its review of DOE's license application to build a repository at Yucca Mountain. In its decision, the court stated: "...the President and federal agencies may not ignore statutory mandates or prohibitions merely because of policy disagreement with Congress."

We were disappointed to hear testimony from DOE Assistant Secretary Peter Lyons before the Environment and the Economy Subcommittee on September 10, 2013, indicating DOE's actions in response to the court's decision would be limited to complying with any NRC or judicial orders. When asked whether DOE would resume its role as the license applicant and once again advocate in favor of NRC's issuance of the license, Assistant Secretary Lyons restated a commitment to following the law, but offered no specifics.

On November 18, 2013, NRC issued its order detailing a course of action to respond to the court's writ of mandamus. In the order, NRC requests that DOE complete the supplemental Environmental Impact Statement (EIS) needed to address potential groundwater impacts,

something DOE committed to do in a letter to the NRC dated October 3, 2008¹ and for which significant analysis has already been completed by DOE.

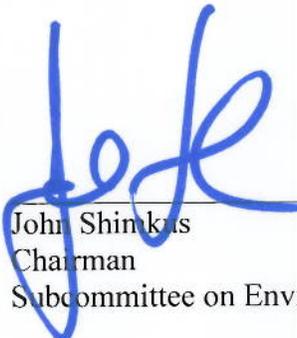
On November 19, 2013, the DC Circuit issued a decision in *National Association of Regulatory Utility Commissioners v. U.S. Department of Energy*. In its decision, the court observed that: “...*the Secretary still declines to carry out his basic statutory obligation.*” It further states, “...*until the Department comes to some conclusion as to how nuclear wastes are to be deposited permanently, it seems quite unfair to force petitioners to pay fees for a hypothetical option, the costs of which might well, the government apparently has no idea, be already covered.*” As a result, the court ordered you “...*to submit to Congress a proposal to change the fee to zero until such a time as either the Secretary chooses to comply with the Act as it is currently written, or until Congress enacts an alternative waste management plan.*”

Despite DOE officials’ repeated commitments to this committee that DOE will follow the law, the impartial U.S. Court of Appeals’ conclusions indicate otherwise. Please respond to the attached questions and provide the requested information by January 2, 2014. If you have any questions, please contact Annie Caputo of the Majority staff at 202-225-2927.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

¹ Boyle, William J., Office of Civilian Radioactive Waste Management, DOE, letter to NRC Document Control Desk, “Notification of Plan for Supplementing the Final Environmental Impact Statement (FEIS)” (Oct. 3, 2008) (ML082810087).

1. In response to the D.C. Circuit's November 19, 2013, decision, please indicate whether DOE intends to submit to Congress a proposal to change the Nuclear Waste Fund fee to zero or begin complying with the Nuclear Waste Policy Act.
2. If DOE intends to submit to Congress a proposal to change the Nuclear Waste Fund fee to zero, please provide a date by which it will provide such a proposal.
3. If DOE intends to begin complying with the Nuclear Waste Policy Act:
 - a. Please provide a copy of DOE's plan for reestablishing the Office of Civilian Radioactive Waste Management and restarting the repository program complete with a schedule and estimates of the resources necessary to implement the plan.
 - b. Please provide a list of the work activities that DOE has assigned to its contractors to support its effort to begin complying with the Nuclear Waste Policy Act.
4. Please provide a copy of DOE's plan for completing the supplemental EIS needed to address potential groundwater impacts, including detailed cost and schedule estimates, as directed in the NRC's November 18, 2013, order.
5. Please provide an estimate of the resources DOE would need to support completion of the NRC's legally mandated license review including culmination in a final decision. If no current estimate is available, please provide the most recent estimate available.
6. In Assistant Secretary Peter Lyons' monthly report on Nuclear Waste Fund expenditures dated December 2, 2013, he indicates \$593,000 was spent on four separate activities. Please provide an itemized list of how much was spent on each activity and estimates of monthly spending on each category for the next two years.
 - a. Please provide a long-term estimate of the pension liability associated with retired Yucca Mountain workers.
 - b. Please indicate how many of the existing retired Yucca Mountain workers were incentivized to retire early as part of DOE's effort to shut down the Yucca Mountain program.
 - c. Please provide a list of the criteria DOE uses to determine if a retiree's pension benefits should be charged to the Nuclear Waste Fund rather than other DOE pension funds.
7. In keeping with the DOE's administration of the Nuclear Waste Fund mentioned in the December 2, 2013, monthly report and the fact that the DOE continues to collect Nuclear Waste Fund fees for the time being, please explain why the DOE ceased preparation of the OCRWM monthly reports on the status of Nuclear Waste Fund collections in 2010.
 - a. When does the DOE plan to resume production and public release of such reports so that the public can determine how much a particular state's electric consumers are paying and have historically paid into the Nuclear Waste Fund?
 - b. Please explain how DOE tracks the date and amount of spent fuel discharge by each standard contract holder and how this information is made publicly available.
 - c. Please explain how the decision to cease making this information publicly available comports with the DOE's commitment to openness and transparency.