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- pol. conversions
- ~~letters from Congress~~
- Adv. Boards / members
- lab security (HSS)
- HA greenery

~~interagency agreement /~~
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GREENING DOE HEADQUARTERS

Office of Management, November 2008

The DOE Headquarters Forrestal and Germantown buildings have award-winning energy conservation and environmental quality programs focused on making our buildings as green as possible and, enabling them to serve as showcases for the entire Department. Both the Forrestal and the Germantown facilities have earned EPA's Energy Star designation, ranking them among the nation's top buildings in terms of energy performance. Of all the buildings in the U.S. only approximately 4000 have earned this distinction. In addition, the Forrestal Building is one of only two Federal Energy Star Buildings in Washington DC. DOE Headquarters achieved these designations after years of effort by the facility managers and staffs to incorporate energy conservation measures into the buildings whenever possible. Some of the past initiatives that helped contribute to these buildings' Energy Star status include the following:

- Installed energy efficient lighting such as LED lights, compact fluorescents, and low-watt fluorescent lamps to update lighting in many areas across the building including: all office spaces, the cafeteria, the main lobby, elevator cars, janitorial closets, emergency exit signs, and outdoor lighting.
- Installed and optimized automated heating, ventilation and air conditioning control systems for better indoor temperature control (Forrestal).
- Consolidated local area network rooms into central computer areas, thereby reducing computer equipment air-conditioning requirements (Forrestal).
- Replaced chilled-water and hot-water pumps with high-efficiency units (Forrestal).
- Installed energy efficient motors in the building's air handling equipment (Forrestal).
- Limited hours of operation for building air handling equipment - to turn on at 7:30am and shut down at 5:30pm weekdays (Forrestal)
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- Constructed new energy efficient CFC free refrigeration plant (Germantown)
- Replaced all existing windows with low emissivity (Low E), argon gas-filled, double pane, evergreen-tinted windows with thermal-break frames (Germantown)
- Installed a building-wide Energy Management Control System (Germantown)
- Installed new roofs with high insulative properties (Germantown)
- Replaced all lighting with energy efficient fixtures (Germantown)

In addition to these many past years' efforts, the Office of Management continues to strive to reduce energy consumption, increasing renewable energy generation, and reducing its environmental footprint. The following highlights some of these recent and ongoing efforts:

Forrestal Solar Array. On September 9, 2008, we energized a new roof-top photovoltaic solar array. This 205 kilowatt system features 891 crystalline silicone panels manufactured by SunPower Corporation of San Jose, California. At 18.5% efficiency, these

panels are among the most efficient on the market. The total system is approximately 40-50 times the size of a typical photovoltaic system installed on a residence. Over the course of a year, this system will generate approximately 200 megawatt hours of electricity and will reduce the facility's electric bill by about \$26,000 per year. In addition to the main array described above, this project also includes a technology showcase which includes four small 1 kilowatt arrays. Each showcase array features a different, emerging solar technology. Meters track the output of each array so experts within the Department can compare how each of these technologies perform. Finally, for those building occupants and visitors wishing to track the performance of the solar arrays, the Forrestal Lobby Museum has an informational display kiosk that shows both cumulative and real-time electricity generation for both the main array and the four technology showcase arrays.

Energy Savings Performance Contract. During FY 2008, DOE Headquarters worked with the NORESKO Energy Service Company to develop a comprehensive, facility-wide Detailed Energy Survey (DES). The purpose of this survey was to identify all potential initiatives to reduce energy consumption throughout the facilities. After extensive reviews, DOE and NORESKO determined that four of these initiatives were technically and economically viable to include in an FY2009 Energy Savings Performance Contract. These initiatives include lighting upgrades, steam trap repairs, chiller consolidation, and domestic water fixture upgrades. DOE HQ and NORESKO are working together to implement this ESPC in FY 2009. Funding for this project is pending as we are seeking a reprogramming to cover upfront costs.

Alternatively Fueled Vehicles. DOE HQ operates a fleet of 47 light duty, official use only vehicles. Currently, 30 of these are alternative fuel vehicles which run on E-85 fuel (85% ethanol, 15% petroleum). The fleet also includes a Hybrid flex fuel vehicle as well as vehicles operating on compressed natural gas. In total, approximately 72% of the DOE vehicle inventory is capable of operating on alternative fuels. In addition, MA operates a contract bio-diesel shuttle bus service to transport employees between the Forrestal and Germantown facilities for official business each weekday between 7:00am and 5:00pm. Finally, in May 2008, MA procured short term, six month leases on two cutting-edge technology alternative fueled vehicles, including a 2007 Ford Escape plug-in hybrid and a 2007 hydrogen fuel cell Chevrolet Equinox.

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Department of Energy
Washington, DC 20585

November 18, 2008

MEMORANDUM FOR INGRID KOLB
DIRECTOR, OFFICE OF MANAGEMENT

FROM: ERIC NICOLL *Eric*
DIRECTOR, EXECUTIVE SECRETARIAT

CAROL A. MATTHEWS *Carol*
DEPUTY DIRECTOR, EXECUTIVE SECRETARIAT

SUBJECT: INFORMATION: 2008 Congressional Correspondence

As you requested, the attached report contains copies of letters from Members of Congress received by the Department throughout calendar year 2008.

The report contains approximately 247 letters which we consider to be "true" Congressional letters; i.e. those addressing primarily public policy issues. The book contains a tab for each of the major DOE program offices. Behind each tab you will find a list of the letters assigned to that program office, in chronological order, followed by copies of the actual letters.

The report also contains a listing of approximately 508 additional Congressional letters received by the Department in 2008. This group includes constituent referral letters, speaking invitations, and other routine correspondence not involving public policy issues.

Attachment



GREENING DOE HEADQUARTERS
Office of Management, November 2008

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Political Conversions

Department of Energy
Washington, DC 20585

August 7, 2008

Gene Aloise
Director, Natural Resources and Environment
U.S. Government Accountability Office

Dear Gene Aloise:

In response to engagement code 450686, enclosed is the conversions data collection instrument document and supporting documentation as requested on the following employees:

- 1) Anna J. Lising, Program Assistant, Office of the Deputy Director for Resources Management, Office of Science
- 2) Eric G. Nicoll, Director, Office of the Executive Secretariat
- 3) Leslie J. Novitsky, Management Analyst, Office of Management, Office of Engineering and Construction Management
- 4) Jeffrey T. Salmon, Associate Under Secretary for Science

If you have any questions or need additional information, please contact Loretta Robinson, Director, Headquarters Human Resources Operations Division, phone: 202-586-9239 or Leatrice Lee, Director, Executive Resources Division, phone: 202-586-6809.

Thank you,

for Lawrence H. Towne
Director, Office of Human Resource Services
Office of Human Capital Management



G A O

Accountability • Integrity • Reliability

United States Government Accountability Office
Washington, DC 20548

July 9, 2008

The Honorable Samuel Bodman
Secretary of Energy
1000 Independence Ave., SW
Room 4H-051
Washington, D.C. 20585

Attention: Ms. L. Dianne Williams
Audit Liaison Specialist
Office of Internal Review
Office of the Chief Financial Officer

Dear Mr. Secretary:

The U.S. Government Accountability Office is beginning a governmentwide review to assess the conversions of employees from noncareer to career positions at executive branch agencies and departments (please see enclosure I for the full list of agencies and departments). The engagement code for this work is 450686. GAO is beginning this work in response to requests made by the House Committee on Oversight and Government Reform; the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Committee on Oversight and Government Reform; the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs; and the Senate Subcommittee on Crime and Drugs, Committee on the Judiciary.

Our objectives are to (1) identify the number and types of conversions of individuals holding noncareer positions to career positions, including the titles, grades, and salaries of both the noncareer and career positions, from May 2005 (the date the last GAO review on this issue ended) through May 2009, and (2) determine whether agencies used appropriate appointment authorities and followed proper procedures consistent with merit systems principles in making the conversions.

We would appreciate your notifying the appropriate offices in your agency and identifying a point of contact for this engagement. We expect to begin work on these issues immediately and given the number of agencies involved, we will be using a data collection instrument to collect information on the career appointments your agency has made. We have enclosed a copy of this data collection instrument to facilitate responses with the information we are seeking (please see enclosure II).

We are asking that you initially provide information for all conversions made from May 1, 2005, through May 30, 2008, to us by July 31, 2008. To follow up on conversions made on or after June 1, 2008, we are asking you to provide information by the 15th of each month beginning in September 2008 through June 2009 on all conversions made during the previous month. In addition, to determine whether appropriate appointment authorities were used and whether merit system principles were adhered to, we will need to examine relevant official personal files and merit staffing files for conversions at the GS-12 level or higher and interview cognizant officials as appropriate.

Consistent with how we have conducted similar work in the past, we will hold an entrance conference with the Office of Personnel Management (OPM) and offer entrance conferences to selected agencies and departments. This engagement will be conducted under the direction of George H. Stalcup, Director, Strategic Issues, phone: 202-512-9490, fax: 202-512-4955, email: stalcupg@gao.gov.

If you have any questions or need additional information, please contact Kiki Theodoropoulos, Assistant Director, phone: 202-512-4579, fax: 202-512-4516, email: theodoropoulosv@gao.gov, or Clifton G. Douglas, Jr., Analyst-In-Charge, phone: 202-512-7845, fax: 202-512-6880, email: douglasc@gao.gov.

Sincerely yours,



Gene Aloise
Director, Natural Resources
and Environment

Enclosures - 2

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Safeguards and Security Performance*
Department of Energy Laboratories

Lab Security

Laboratory	Overall Evaluation	Comment
Los Alamos National Laboratory (LANL)	Effective Performance	The 2008 Independent Oversight inspection found significant improvements in addressing many long standing security issues. Focused management support contributed to overall protection program effectiveness. Some elements of nuclear material control and accountability and classified matter protection and control need improvement
Lawrence Livermore National Laboratory (LLNL)	Effective Performance	The 2008 Independent Oversight inspection found some safeguards and security program elements to include material control and accountability and classification and information control programs to be effectively implemented. However, fundamental weaknesses in protective force operations, protection program management, and protection of classified information were identified.
Sandia National Laboratories (SNL)	Effective Performance	The 2007 Independent Oversight inspection determined that the laboratory had achieved success in addressing past security program weaknesses and in instituting management reforms and process improvements. Some weaknesses were identified in protective force emergency duties that require management's attention.
Idaho National Laboratory (INL)	Needs Improvement	The 2007 Independent Oversight inspection determined that INL has integrated two formerly distinct safeguards and security programs into a single cohesive organization while sustaining effective performance in material control and accountability and physical security systems programs. However, deficiencies identified in the personnel security program, feedback/improvement processes, and determinations for classifying documents merit additional management attention.
Oak Ridge National Laboratory (ORNL)	Needs Improvement	The 2006 Independent Oversight Inspection found that programs to protect classified information, protective force capabilities, and accountability and control of nuclear materials are well executed. However, weaknesses identified in the human reliability program, vulnerability analyses, and feedback and improvement programs need to be addressed.

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* Overall impressions of safeguards and security performance based upon the last Independent Oversight inspection or assistance review at the laboratory.

** This table lists laboratories with strategic quantities of special nuclear materials and large inventories of classified information.

[REDACTED] - Assigned when the system being inspected provides reasonable assurance that the identified protection or program needs are met (overall performance is effective).

Needs Improvement (Yellow): Assigned when the system being inspected only partially meets identified protection or program needs or is not sufficiently mature and robust to provide assurance that the protection or program needs are fully met.

[REDACTED] Assigned when the system being inspected does not provide adequate assurance that the identified program needs are met. Line managers are expected to apply immediate attention, focus, and resources to the deficient program areas.

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Date and Time: November 21, 2008—3:00pm to 4:00p.m

Discussions as follow up to the initial briefings from Thursday Nov. 20, 2008 on details:

SPR:

- 1) Does FE have a Policy Group for SPR that interfaces with policy decision at DOI's BLM and on issues regarding OCS matters or with MMS?
 - **Deliverable: Confirm whether FE does in fact have such a policy office for SPR.**
- 2) What is the policy, who determines, what is the process for determining what crude type and amount should be stored in the fill?
 - **Deliverable: Provide the basis for the policy decision on the crude type for SPR fill.**
- 3) Has DOE ever considered a gasoline reserve? Can we convert a facility to cavern storage of gasoline?
 - **Deliverable: Will provide answer as to whether a study has ever been done and if so, what issues would need to be addressed for cavern storage of gasoline.**

FE Across-the-Board:

- 4) What documentation is there that exists on the run up in costs for the original FutureGen project?
 - **Deliverable: Request for a copy in electronic form of the Interim Conceptual Design Report.**
- 5) Please provide a list of pending and ongoing studies across FE- upon further discussion and clarification, the request was for planned and ongoing RD&D activities names, states and congressional districts and amount of funding for each project and activity.
 - **Deliverable: A tabulated list of such projects and activities with the requested information.**
- 6) Please provide a list of those activities, studies and projects which have been appropriated that can be fore-stalled or stopped?
 - **Deliverable: List of such studies and projects.**
- 7) Does FE have international programs in coal, oil and gas, and SPR, and what is the funding?
 - **Deliverable: Provide the amounts of funding for the international programs in Coal, Oil and Gas and for SPR.**
- 8) What advisory committees are there in the FE area, and what studies have these FACA committees have done for the past 3 years.
 - **Deliverable: A list of all the Advisory Committees for DOE relating to FE and copies of the studies that they have done for DOE in the past 3 years.**
- 9) What are the outside organizations (stakeholders) that interact with FE in each of the areas?

- **Deliverable: Provide a complete list of outside stakeholder groups that interact with FE by areas -Coal, Oil and Gas, and SPR.**
- 10) Are there independent agencies that review FE programs?
 - **Deliverable: Provide copies of the reports of these independent reviews as well as the audits from the GAO in the FE program areas of Coal, Oil and Gas, and SPR.**
- 11) Have there been studies on the personnel functions regarding federal functions (A-76)?
 - **Deliverable: Provide the results of case studies completed on Fossil Energy federal functions with respect to A-76.**
- 12) Regarding RPSEA, can you provide the contact person at the industry consortium and at DOE HQ and at NETL? Does the Section 999 program have the flexibility to redistribute the funding percentages?
 - **Deliverable: Provide answer as to contact personnel on RPSEA, and whether such funding flexibility exists under the Sec 999 program.**
- 13) Why is NPR-3 still on the books at DOE and not with some other agency?
 - **Deliverable: Provide answer to the question as to why NPR-3 is still with DOE and not at some other agency.**

FAX TRANSMITTAL

Pages: 2, including cover sheet

Date: 11/26/08

From: T. Minvielle

To: Laurie Morman

Activity: NA-30

Activity: MA

Fax #: _____

Fax #: 586-1661

Phone #: 781-6198

Phone #: 586-2550

Subject: Information Paper for Mr. Niedzielski - Eichner

CLASSIFICATION/REMARKS

SECRET

CONFIDENTIAL

UNCLASSIFIED

FOR YOUR REVIEW

REPLY ASAP

PLEASE COMMENT

COMMENTS:

Laurie -

Also sent via email.

Thanks again,

T. Minvielle

1995 AGREEMENT REGARDING MANAGEMENT OF NAVAL SPENT NUCLEAR FUEL IN IDAHO

- Since 1958, all naval spent nuclear fuel has been sent to the Naval Reactors Facility (NRF) on the Idaho National Laboratory (INL) for inspection and temporary storage. From 1958 to 1992, naval spent nuclear fuel was transferred from NRF to the Department of Energy (DOE) for reprocessing with other DOE spent nuclear fuel from non-Navy sources. In April 1992, DOE formally discontinued spent nuclear fuel reprocessing. As a result of this decision, the Naval Nuclear Propulsion Program (a joint organization of the DOE and the Navy under 50 USC §§ 2406, 2511) continued to store naval spent nuclear fuel at INL pending the opening of a permanent geological repository.
- In June 1993, the United States District Court for the District of Idaho enjoined the Federal Government, including the Naval Nuclear Propulsion Program, from shipping spent nuclear fuel to INL pending completion of an Environmental Impact Statement (EIS). Following completion of the EIS in April 1995, Idaho, DOE, and Navy settled the litigation. The Settlement Agreement is dated 16 October 1995 and takes the form of a Consent Order filed by the Department of Justice (DoJ) on behalf of the federal parties. This Agreement is commonly referred to as the "1995 Agreement" or "Batt Agreement."
- The 1995 Agreement governs management of all spent nuclear fuel at Federal facilities in Idaho. The ongoing obligations of the Naval Nuclear Propulsion Program under the Agreement include the following:
 - Limit the number of shipments of naval spent nuclear fuel to Idaho to a running average of 20 containers per year.
 - Provide to Idaho annually a report of the actual number of shipments made in the prior calendar year and a report of the expected number of shipments during the next calendar year.
 - Include naval spent nuclear fuel among the early shipments to a permanent geological repository or interim storage site.
 - Place all spent nuclear fuel in dry storage by 1 January 2023.
 - Remove all spent nuclear fuel from Idaho by 1 January 2035.

Since the time the agreement was filed in Federal court, the Naval Nuclear Propulsion Program has complied with all terms and conditions of the agreement.

- Facilities in Idaho for inspection and temporary storage of naval spent nuclear fuel are unique, and investment to recapitalize this infrastructure is needed if any activities are to continue beyond 2035. The Naval Nuclear Propulsion Program intends to use NRF beyond 2035 to examine naval spent nuclear fuel and process it for permanent disposal in the Nation's geologic repository. Recreating facilities for these purposes outside of Idaho would be imprudent.
- In June 2008, the Navy, Idaho, and the Department of Energy signed an Addendum to the 1995 Settlement Agreement to address the continued management of naval spent nuclear fuel at NRF beyond 2035. The Addendum includes the following key provisions:
 - Continued use of the water pool: The Addendum clarifies that processing of naval spent nuclear fuel in a water pool is acceptable after 2023. Fuel managed in a water pool for processing must be removed from the pool within six years of its emplacement in the pool.
 - Continued management of naval spent nuclear fuel at NRF: The Addendum clarifies that inspection and processing of naval spent nuclear fuel in Idaho may continue after 2035. The addendum limits the amount of naval spent nuclear fuel that may be managed at NRF to 9 metric tons of heavy metal.
 - Library materials: The Addendum expressly recognizes the need for archival storage of some naval spent nuclear fuel to support fuel designs under development or in service. The Naval Nuclear Propulsion Program is authorized to store up to 750 kg of heavy metal of such material (in addition to the 9 metric ton inventory discussed above) either wet or dry with no time limitation.



Department of Energy
National Nuclear Security Administration
Washington, DC 20585

November 26, 2008

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR LAURIE MORMAN

FROM: BILL BARKER
NNSA

Jocia Smith for

SUBJECT: Reports on Plutonium Disposition

It is my understanding that on Monday, November 24, 2008, during a discussion between Phil and Will Tobey, NNSA's Deputy Administrator for Defense Nuclear Nonproliferation, Will was asked to provide a copy of a report we sent to Congress regarding alternatives to the MOX Facility. In response to that request, attached is a January 2007 report entitled, "Disposition of Surplus U.S. Fissile Materials Comparative Analysis of Alternative Approaches."

If you or Phil have any comments or questions on this material, please contact me or Ken Bromberg (6-6232).

Attachment: As stated



DISPOSITION OF SURPLUS U.S. FISSILE MATERIALS COMPARATIVE ANALYSIS OF ALTERNATIVE APPROACHES

BACKGROUND

The Department was requested by Congress to analyze alternatives to dispose of surplus U.S. fissile materials, and to compare their life cycle costs. This analysis addresses all of the currently identified surplus plutonium, which is approximately 50 metric tons (MT), and 26 MT of surplus highly enriched uranium (HEU) for which viable disposition paths have not been identified. The Department has analyzed various approaches to dispose of these materials, and has determined the viable options, including a “no action” alternative, to be:

Alternative 1: the construction and operation of a Mixed Oxide (MOX) Fuel Fabrication Facility (MOX FFF), a Pit Disassembly and Conversion Facility (PDCF), and an associated Waste Solidification Building (WSB); the design, construction and operation of a plutonium vitrification process, and operation of the H-Canyon/HB-Line at Savannah River Site. This alternative is considered to be DOE’s baseline plan for processing and disposing of surplus plutonium and HEU that lacks a current disposition path.

Alternative 2: the construction and operation of the MOX Facility, PDCF, WSB, and Plutonium Vitrification, but does not include operation of H Canyon

Alternative 3: storage only or “no action” alternative, where essentially all the materials would remain stored at the site where they are currently stored. No movement or consolidation of material is assumed.

Alternative 4: the design, construction, and operation of a large-scale plutonium immobilization facility and PDCF, where the entire inventory of surplus plutonium and 7 MT of HEU other than spent nuclear (non-SNF HEU) would be immobilized in a ceramic matrix for disposal in the federal repository. PDCF would still be needed to convert plutonium metal into oxide for immobilization.

This paper describes the alternatives that were considered in this cost comparison, with emphasis on fully presenting the assumptions used in developing the cost information.

SUMMARY OF THE COST COMPARISON ANALYSIS

The cost data for this study were compiled by NNSA and the Office of Environmental Management, based on the best available existing cost estimates and documentation.

The NNSA Office of Fissile Materials Disposition was the source of data on the MOX Fuel Fabrication Facility, Pit Disassembly and Conversion Facility, Waste Solidification Building, and plutonium immobilization. The MOX FFF costs are based on the results of an independent review as part of the Department’s Critical Decision 2 (CD-2) process. Final validation is awaiting a Congressional decision on the Department’s FY 2007

budget request. The PDCF and WSB costs are based on recent near-CD 2 cost estimates. Annual operating costs are based on current Project Data Sheet estimates.

The costs for plutonium immobilization (Alternative 4) are based on a 2001 Design-Only Conceptual Design Report cost estimate, recently updated to reflect changes in design costs, construction costs, and contingencies, as well as estimates of the remaining research and development work that is needed. The estimate is characterized by high uncertainty.

The Office of Environmental Management provided the costs for Plutonium Vitrification in Alternatives 1 and 2, H Canyon operations, and the spent fuel packaging capability for Alternatives 2 and 4. The Plutonium Vitrification costs are based on a Critical Decision 0 (Approval of Mission Need) cost range, and the higher end of the range was used for the purposes of this analysis. H Canyon costs are based on current operations at that facility. The costs of the spent fuel packaging capability are based on a pre-conceptual cost range estimate.

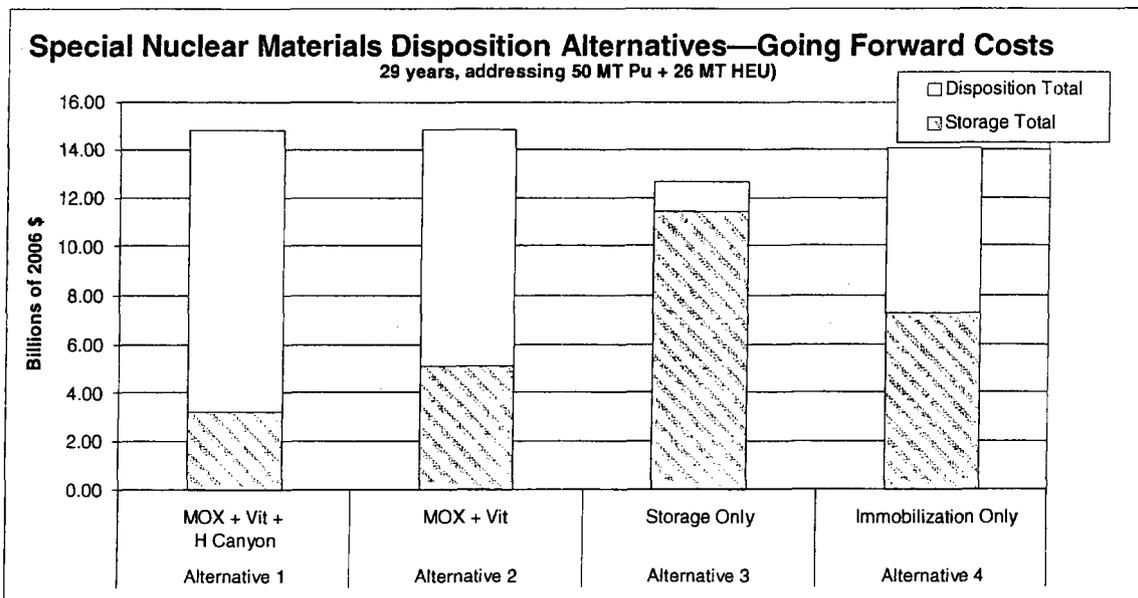
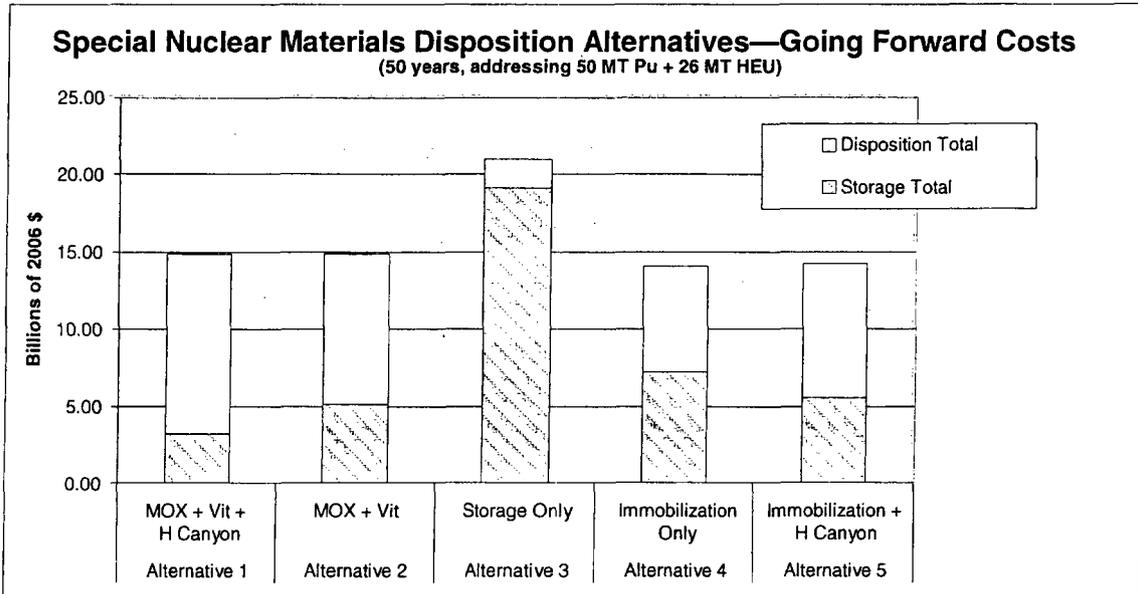
The material storage costs were collected from officials at the affected sites and programs. Estimates are based on historical operating costs and include the full cost of operating the specified storage facility including costs for safeguards and security. Also included are estimates for necessary upgrades in certain alternatives, where applicable. It is recognized that total long-term storage costs, particularly in Alternative 3, might be reduced through additional consolidation efforts, but that is beyond the scope of this study. In addition, it is highly unlikely that states would permit consolidation of nuclear materials to their respective jurisdictions in the absence of approved and funded disposition paths.

All costs are going-forward costs, and do not include sunk costs (estimated through the end of Fiscal Year 2006). All costs are given in constant 2006 dollars. The total cost of the MOX alternatives is partially offset by the revenues that will accrue to the U.S. Treasury from the purchase of MOX fuel by the utility. The costs of the alternatives that include the PDCF are partially offset by the revenues that will accrue to the U.S. Treasury from the purchase of low-enriched uranium derived from HEU that will result from its operation. Finally, the costs of H Canyon operation are partially offset by the revenues that will accrue to the U.S. Treasury from the sale of low-enriched uranium derived from the HEU that will be purified in H Canyon.

The data were originally presented based on a 50 year storage period, which was selected to avoid a bias against the disposition alternatives, and because the DOE Standard 3013 for long-term storage of plutonium addresses that period. Subsequently, a supplemental case was developed based on termination of storage costs in 2035, which is roughly the timeframe in which all the disposition missions are projected to be completed, notwithstanding that the storage costs would not end in 2035 if no action were taken to dispose of the materials. Both results are presented in the charts below. The two cases result in different costs for Alternative 3, which involves Storage Only. Continued storage of these materials in their current locations [assuming no consolidation] results in

a cost of roughly \$400-500 million/year, complex-wide. Disposition of these materials would still have to be decided, funded and implemented at the end of the storage period.

The analysis assumes all known current legislative requirements remain unchanged and are met, or specifies where an alternative does not meet them. This includes potential fines and penalties owed to the state of South Carolina, where applicable, based on the requirements of Public Law 109-103, which are discounted to 2006 dollars.



Note: These cost charts have been revised since July 2006 to reflect the results of the recent independent review of the MOX FFF Total Project Cost (TPC) as part of DOE's Critical Decision process, and also a slight adjustment for PDCF based on a later schedule (to align with the MOX project schedule). These changes increase the going-forward cost of the MOX option from about \$3.9 billion to about \$4.9 billion. In comparison, the TPC of the MOX Fuel Fabrication

Facility has recently been established at \$4.7 billion, but has yet to be validated due to uncertainty over DOE's FY 2007 budget request for Fissile Materials Disposition, which could result in additional changes to the MOX cost and schedule baseline. The going-forward cost estimate used in this report is not inconsistent with or a revision of the TPC estimate, since the two estimates are based on the same MOX technical design, but are used for different purposes and address different periods of time and categories of costs.

The TPC establishes a project cost and schedule baseline against which construction progress can be measured (via Earned Value Management System). The TPC: includes the total cost of design, construction, and cold startup of the MOX Facility; includes sunk costs since project inception; includes escalation of 3.6 percent per year; and excludes operating costs (after cold startup) and fuel credits. The TPC of \$4.7 billion remains valid, assuming Congress approves the Department's FY 2007 budget request for MOX.

The going-forward cost used in this study is designed to facilitate comparisons among various storage and disposition alternatives. As such it: excludes sunk costs (only costs from FY 2007 forward are included); is not escalated (costs are expressed in constant 2006 dollars for each alternative); and includes operating costs through the end of operations for the MOX facility, i.e., completion of the 34 MT disposition mission, partially offset by revenues received from the sale of MOX fuel.

ALTERNATIVE ONE – MIXED OXIDE FUEL FABRICATION FACILITY, PIT DISASSEMBLY AND CONVERSION FACILITY, WASTE SOLIDIFICATION BUILDING, PLUTONIUM VITRIFICATION AND H CANYON

Description

This alternative includes the completion of design, construction and operation of the MOX Facility, PDCF, WSB, and Plutonium Vitrification, and the continued operation of H Canyon/HB-Line. All facilities are located at or proposed to be located at Savannah River Site (SRS) in Aiken, SC.

Results

This alternative results in:

- the fabrication of 34 MT weapons usable plutonium into MOX fuel and its subsequent use in commercial nuclear reactors for power production;
- the vitrification of 6-13 MT of non-MOXable plutonium for geologic disposal;
- recovery of uranium from stored DOE spent nuclear fuel, surplus uranium materials, and pits, for reuse in the commercial fuel cycle; and
- near term disposition of plutonium through processing in H-Canyon/HB-Line facilities and transfer to the Defense Waste Processing Facility (DWPF) at SRS for vitrification and eventual geologic disposal.

This alternative provides a disposition path for all the currently identified surplus special nuclear material (SNM) addressed by the study. It enables the Department to consolidate SNM, including the deinventory of Hanford by 2009, the deinventory of surplus materials at Lawrence Livermore National Laboratory (LLNL) by 2009, and the deinventory of surplus materials at Los Alamos National Laboratory (LANL) by 2009. This results in the smallest number of DOE CAT I storage facilities at the earliest time. Through consolidation, this alternative also facilitates the Department's plan for achieving the 'Complex 2030', a more modern, smaller-footprint weapons complex.

Assumptions

- MOX construction begins in FY 2007 and becomes operational in 2016.
- Pu Vit project proceeds in FY 2008 and becomes operational in 2012.
- Costs for transportation and containers for vitrified plutonium are included in the analysis.
- SRS is the preferred location to consolidate plutonium based on co-location with the disposition facilities.
- Deinventory of Hanford is initiated in 2007 and completed in 2009.
- In all cases, the current safeguards and security requirements (2005 Design Basis Threat) are unchanged.
- H Canyon remains a CAT II facility.
- All DOE aluminum clad spent nuclear fuel will be processed in H Canyon and the HEU recovered and down-blended to low-enriched uranium for reuse as commercial reactor fuel.
- The spent nuclear fuel swap between Idaho National Laboratory (INL) and SRS is implemented. All zirconium clad fuel stored at SRS would be shipped to Idaho, and

all aluminum clad fuel stored at Idaho would be shipped to SRS for processing in H Canyon. Incremental costs for implementing the fuel swap at Idaho are not included in this analysis.

- Direct disposal of DOE aluminum-clad HEU fuel in the geologic repository would not be needed.
- Treatment and storage capability at SRS for packaging DOE spent nuclear fuel for direct disposal in the geologic repository would not be needed.
- No incremental storage cost for HEU is incurred at Oak Ridge - HEU is shipped to SRS for processing in H Canyon by 2009 to meet the schedule for the deinventory of current Y-12 storage facilities by the time the Highly Enriched Uranium Materials Facility (HEUMF) becomes operational.
- Deinventory of surplus plutonium and enriched uranium at LLNL would be completed in 2009.
- Deinventory of surplus plutonium and enriched uranium at LANL would be completed in 2009.
- Two years worth of fines and penalties would be owed to SC under the provisions of Public Law 109-103. [Congress may find it possible to waive these fines in this scenario given the progress against the goals of disposition and removal of plutonium from SRS.]
- Post-disposition' storage costs associated with MOX or PDCF process waste or irradiated (spent) MOX Fuel would be negligible.

ALTERNATIVE TWO – MIXED OXIDE FUEL FABRICATION FACILITY, PIT DISASSEMBLY AND CONVERSION FACILITY, WASTE SOLIDIFICATION BUILDING, AND PLUTONIUM VITRIFICATION, *BUT NO H CANYON*

Description

This alternative includes the completion of design, construction and operation of the MOX Facility, PDCF, WSB, and Plutonium Vitrification. The only difference from Alternative One is that operation of H Canyon/HB Line is not included. All facilities are proposed to be located at Savannah River Site (SRS) in Aiken, SC.

Results

This alternative results in:

- The fabrication of 34 MT weapons usable plutonium into MOX fuel and its subsequent irradiation in commercial nuclear reactors;
- 6-13 MT non-MOXable plutonium vitrified for geologic disposal;
- Disposition of HEU materials (non-SNF) through vitrification process;
- Recovery of uranium only from pits in PDCF for reuse in commercial fuel cycle;
- Capability to package all SNF located at SRS for shipment to geologic repository;
- Consolidation of SNM; and
- Smallest number of safeguards CAT I storage facilities.

Assumptions

- MOX construction begins in FY 2007 and becomes operational in 2016.
- Pu Vit project proceeds in FY 2008 and becomes operational in 2012.
- Costs for transportation and containers for vitrified plutonium and SNF are included.
- SRS is the preferred location to consolidate based on the location of the disposition missions.
- Deinventory of Hanford is initiated in 2007 and completed in 2009.
- Current safeguards and security requirements (2005 Design Basis Threat) are unchanged.
- H Canyon is deactivated immediately (in FY 2007) and remains in that state until decommissioned according to the EM Program Baseline beginning in 2016.
- Treatment and Storage capability must be established at SRS for packaging spent nuclear fuel stored at SRS for direct disposal in the geologic repository.
- The vitrification process can also be used to immobilize HEU following the completion of plutonium vitrification, resulting in an additional 4 years of processing. Costs for additional high level waste canisters resulting from immobilization of HEU and subsequent disposal costs were not included.
- DWPF will be operational at least until 2024 to accommodate the can-in-canister approach for plutonium and HEU (consistent with the current EM baseline).
- Continued storage of HEU at Y-12 results in the need for an additional CAT I storage facility by 2014, including necessary DBT upgrades, and operation until the end of immobilization of the HEU (2023).
- Sandia Pulse Reactor Fuel is shipped to and stored at Device Assembly Facility (DAF, at Nevada Test Site) until it is immobilized at Pu Vit.

- Deinventory of surplus materials at LLNL is complete by 2014, consistent with the Complex 2030 Plan.
- Deinventory of surplus materials at LANL is complete by 2022, consistent with the Complex 2030 Plan.
- LLNL and LANL cannot be deinventoried earlier due to lack of a disposition path for the surplus HEU.
- Two years worth of fines and penalties would be owed to SC under the provisions of Public Law 109-103.

ALTERNATIVE THREE – STORAGE ONLY (NO ACTION)

Description

This alternative is also considered to be the “no action” alternative. Surplus materials would continue to be stored at the sites where they are currently located. Upgrades to meet current DBT requirements are assumed. It is assumed that neither disposition decisions nor consolidation decisions are made during the study period and that disposition would still need to be completed.

Results

This alternative results in:

- Material left stored in its current locations and configurations, with necessary surveillance and monitoring;
- Development of the capability at SRS to package all SNF for shipment to geologic repository; and
- The lowest cost based on annual costs thru 2035, and the highest cost if storage is extended for 50 years. (If no action is taken, the storage costs would not end in 2035, and disposition paths would still need to be identified, funded, and implemented.)

Assumptions

- Current safeguards and security requirements (2005 Design Basis Threat) are unchanged.
- No state would be willing to take surplus material until a disposition path is identified and funded.
- Safeguards and security upgrades (new vault) needed at Hanford in order to meet 2005 DBT.
- H Canyon is deactivated immediately (in FY 2007) and remains in that state until decommissioned according to the EM Program Baseline beginning in 2016.
- Treatment and Storage capability established at SRS for packaging spent nuclear fuel for direct disposal in the geologic repository.
- Costs for transportation and containers for SNF are included.
- Continued storage of HEU at Y-12 results in the need for an additional CAT I facility by 2014, including necessary DBT upgrades, and operation until the end of immobilization of the HEU (2030).
- Vault modifications needed at Pantex at Zone 4 to support continued storage of surplus materials.
- Sandia Pulse Reactor Fuel shipped to and stored at DAF.
- Fines would be due to SC under the provisions of Public Law 109-103 until the end of the storage period (either 2035 or 2056), and no further Congressional action is taken to avert these legislated fines.
- Storage costs based on the full operational cost of the specified CAT I storage facility (based on historical operational costs). Costs have not been prorated based on surplus versus programmatic material. DOE would have to maintain a fully costed facility until all CAT I material is deinventoried from the site/facility.

ALTERNATIVE FOUR – PLUTONIUM IMMOBILIZATION, AND PIT DISASSEMBLY AND CONVERSION FACILITY

Description

This alternative includes the design, construction and operation of a large-scale plutonium immobilization facility, where plutonium would be immobilized in a ceramic matrix. The resulting product would be sent to DWPF or other high-level waste vitrification facility to be vitrified in a can-in-canister configuration. The PDCF would also be needed under this scenario to convert the plutonium metal in pits to oxide.

Results

This alternative results in:

- Immobilization of all 50 MT plutonium and 7 MT of non-SNF HEU in a ceramic matrix for geologic disposal, to be completed in FY 2030; and
- Capability to package HEU SNF stored at SRS for shipment to a geologic repository.

Assumptions

- Authorization and appropriations are provided in FY2007 to perform research and development and initiate design of an immobilization facility.
- Material cannot be shipped to SRS/or any other disposition site until the plutonium immobilization facility becomes operational.
- Safeguards and security upgrades (new vault) needed at Hanford in order to meet 2005 DBT.
- Current safeguards and security requirements (2005 Design Basis Threat) are unchanged.
- H Canyon is deactivated immediately (in FY 2007) and remains in that state until decommissioned according to the EM Program Baseline beginning in 2016.
- Treatment and Storage capability established at SRS for packaging spent nuclear fuel for direct disposal in the geologic repository.
- Costs for transportation and containers for immobilized plutonium and SNF are included.
- The immobilization (ceramic) process can also be used to immobilize surplus HEU following the completion of plutonium immobilization. Costs for additional high level waste canisters resulting from immobilization of HEU and subsequent disposal costs were not included.
- DWPF will be operational until 2024 to accommodate the can-in-canister disposition for plutonium and highly enriched uranium, but will not be available for the remaining immobilization campaign. Cost for dealing with any other can-in-canister process was not included in this analysis.
- Continued storage of HEU at Y-12 results in the need for an additional CAT I storage facility by 2014, including necessary DBT upgrades, and operation until the end of immobilization of the HEU (2030).
- Vault modifications needed at Pantex at Zone 4 to support continued storage of surplus materials.
- Sandia Pulse Reactor Fuel shipped to and stored at DAF until immobilized.

- Deinventory of surplus materials at LLNL complete by 2014, consistent with the Complex 2030 Plan.
- Deinventory of surplus materials at LANL complete by 2022, consistent with the Complex 2030 Plan.
- LLNL and LANL cannot be deinventoried earlier due to lack of a disposition path for the surplus HEU.
- Fines would be due to SC under the provisions of Public Law 109-103 until the plutonium immobilization facility becomes operational.

Attachment 1: PLUTONIUM DISPOSITION FACILITY ALTERNATIVES

PLUTONIUM VITRIFICATION FACILITY

The Plutonium Vitrification Facility is proposed to be located in the basement of the former K Reactor facility at Savannah River Site. The facility will provide the capability to vitrify plutonium material from metals and oxides. The plutonium materials will be melted with glass frit at a temperature that allows the plutonium to be incorporated into the glass matrix versus encapsulation and poured into small cans. Cans of vitrified plutonium will be placed inside canisters and the canisters shipped to the Defense Waste Processing Facility at SRS where they will be filled with glass containing high activity waste. The filled canisters will be stored at SRS for an interim period of time awaiting shipment to the geological repository for final disposal.

MIXED OXIDE FUEL FABRICATION FACILITY (MOX FFF)

The Mixed Oxide Fuel Fabrication Facility will disposition at least 34 metric tons of weapon-grade plutonium. This facility is planned to be located at the Savannah River Site in Aiken, South Carolina. The facility will fabricate reactor fuel utilizing both plutonium and uranium oxide. The reactor fuel will be irradiated at existing commercial reactors operated by Duke Power Company.

PIT DISASSEMBLY AND CONVERSION FACILITY (PDCF)

The Pit Disassembly and Conversion Facility will disassemble the plutonium core of nuclear weapons, convert the metal to an oxide, and transfer the oxide to the MOX FFF for fabrication into reactor fuel.

PLUTONIUM IMMOBILIZATION PLANT (PIP)

The Plutonium Immobilization Plant, a former project cancelled by the Department in 2002, was to immobilize plutonium in a ceramic matrix. The ceramic product would then be placed inside canisters to be filled with vitrified high activity waste. The filled canisters would be stored pending shipment to the geological repository for final disposal.

H CANYON/HB-LINE

H Canyon/HB-Line are large heavily shield aqueous fuel reprocessing facilities at the Savannah River Site. The facilities have been operated continuously since they were constructed in the early 1950s. The facilities have the capability of dissolving both enriched uranium spent nuclear fuel, other enriched uranium materials, and plutonium-bearing materials, and chemically separate their constituents. The enriched uranium recovered from the spent fuel is down-blended to low enriched uranium and used as feed material for the fabrication of fuel for power reactors. The plutonium can be disposed of directly to the SRS liquid waste system, where the waste will be vitrified and disposed of in the geologic repository, or alternatively, the plutonium can be purified and converted to an oxide.

Alternative	Results in:
Alternative 1 – MOX, PDCF, WSB, Plutonium Vitrification and continued H Canyon/HB-Line Operation	<ul style="list-style-type: none"> - 34 MT weapons usable plutonium fabricated into commercial MOX fuel and used to provide power in commercial nuclear reactors - 6-13 MT non-MOXable plutonium vitrified for geologic disposal - Recovery of uranium from stored DOE SNF, surplus uranium materials, and pits for reuse in commercial fuel cycle - Near term disposition of plutonium through H-Canyon/HB-Line facilities - Smallest number of safeguards Category I storage facilities
Alternative 2 – MOX, PDCF, WSB, and Plutonium Vitrification	<ul style="list-style-type: none"> - 34 MT weapons usable plutonium fabricated into commercial MOX fuel and used to provide power in commercial nuclear reactors - 6-13 MT non-MOXable plutonium vitrified for geologic disposal - Disposition of non-SNF HEU through vitrification process - Recovery of uranium only from pits in PDCF for reuse in commercial fuel cycle - Development of the capability to package SNF stored at SRS for shipment to geologic repository
Alternative 3 – Storage Only	<ul style="list-style-type: none"> - Material left stored in its current locations - Development of the capability to package SNF stored at SRS for shipment to geologic repository
Alternative 4 – Plutonium Immobilization and PDCF	<ul style="list-style-type: none"> - Immobilization of all 50 MT plutonium and 7 MT non-SNF HEU in ceramic matrix for geologic disposal - Development of the capability to package HEU SNF for shipment to geologic repository

Attachment 3: COMPARISON OF DISPOSITION ALTERNATIVES

Alternative	Pros	Cons	Other Considerations
Alternative 1: Mixed Oxide (MOX) Fuel Fabrication Facility, Pit Disassembly and Conversion Facility (PDCF), Waste Solidification Building (WSB), Plutonium Vitrification, and H-Canyon/HB-Line Operation	<ul style="list-style-type: none"> - Provides a complete method for disposition of all DOE MOXable and non-MOXable plutonium and HEU that lacks a disposition path - Provides near term disposition of plutonium through H-Canyon/HB-Line facilities - Enables consolidation of SNM and achievement of Complex 2030 goals - Results in smallest number of CAT I storage facilities -Realizes energy value from materials converted to civilian use -Facilitates meeting agreements with international partners (e.g., Russia) and the State of SC -Results in a definite schedule for progress in SNM consolidation and disposition 	<ul style="list-style-type: none"> - Requires large near term investment 	<ul style="list-style-type: none"> - Meets the object of the statutory language for disposition/removal of materials from South Carolina (SC) - Meets the objective of the statutory language to maintain H-Canyon in an operable state
Alternative 2: MOX Facility, PDCF, WSB, and Plutonium Vitrification	<ul style="list-style-type: none"> - Supports consolidation of SNM - Results in smallest number of safeguards CAT I storage facilities - Facilitates meeting agreements with international partners (e.g., Russia) and the State of SC 	<ul style="list-style-type: none"> - Requires large near term investment - Does not maximize recovery of energy value of material - Requires capability at SRS to package SNF for disposal to geologic repository - Start of disposition of SNM does not occur until 2013 	<ul style="list-style-type: none"> - Does not meet the objective of the statutory language to maintain H-Canyon in an operable state
Alternative 3: Storage Only	<ul style="list-style-type: none"> - Minimizes near term investment 	<ul style="list-style-type: none"> - Does not provide for final disposition of material - Costs continue indefinitely - Recovers no energy value from material - Does not support consolidation of SNM - Results in highest number of safeguards Category I storage facilities - Would result in the State of SC seeking fines or other action - Requires capability at SRS to package SNF for disposal to geologic repository If no other action is taken, storage costs will eventually exceed disposition costs. 	<ul style="list-style-type: none"> - Does not meet the objective of the statutory language for disposition/removal of materials from SC - Would have to consider moving material out of SC - Does not meet the objective of the statutory language to maintain H-Canyon in an operable state
Alternative 4: Plutonium Immobilization and PDCF	<ul style="list-style-type: none"> - Provides a disposition path for all 50 MT Pu and non-SNF HEU 	<ul style="list-style-type: none"> - Requires large investment for construction of facilities - Essentially takes disposition program back to infancy stage - Reverts to immature technology requiring significant research and design and great uncertainty - Does not recover energy value from the material - Does not support consolidation of SNM - Could result in the State of SC seeking fines or other action 	<ul style="list-style-type: none"> - Does not meet the objective of the statutory language for disposition/removal of materials from SC - May have to consider moving facilities and material out of SC - Does not meet the objective of the statutory language to maintain H-Canyon in an operable state - Does not align with DWPF operations schedule at SRS; other alternatives (e.g., Hanford WTP) would have to be considered - Does not take into consideration additional

		<ul style="list-style-type: none">- Requires capability to disposition immobilized plutonium and SNF to geologic repository- Results in security upgrades needed for current storage facilities	national repository costs associated with increase in materials
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Energy Legislation in Congress
September 26, 2008

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
9/11 Commission Recommendation Act of 2001 (S.4)	Sen. Reed (1/4/2007)	Reported on 2/22/2007 (No Report Number)	Senate approved the bill on 3/13/2007 (60-38). Subsumed into H.R. 1 (as an amendment) on 3/13/2007.	H.R. 1 became P.L. 110-53 on 7/9/2007.
9/11 Commission Recommendation Act of 2007 (H.R. 1)	Rep. Thompson (of Mississippi) (1/5/2007)		House approved on 1/9/2007 (299-128); Senate approved on 7/9/2007 (by unanimous consent); Conference Report was reported on 7/25/2007; House agreed to Conference Report 7/27/2007 (371-40).	H.R. 1 became P.L. 110-53 on 7/9/2007.
Energy Security and Diplomacy (S. 193)	Sen. Lugar (1/4/2007)	Reported on 4/12/2007 (S. Rpt. 110-54)		
Ten-in-Ten Economy Act (S. 357)	Sen. Feinstein (1/22/2007)	Reported on 5/8/2007 (No report assigned). Bill with an amendment was incorporated into S. 1419.		
High-Performance Green Building Act of 2007 (S. 506)	Sen. Lautenberg (2/6/2007)	Reported on 12/12/2007 (S. Rpt. 110-241)		

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
A Bill to Amend the Energy Policy Act of 2005 to Provide an Alternate Sulfur Dioxide Removal Measurement for Certain Coal Gasification Project Goals (S. 645)	Sen. Craig (2/15/2007)	Reported on 12/12/2007 (S. Rpt. 110-158)		
Accountability in Government Contracting Act of 2007 (S. 680)	Sen. Collins (2/17/2007)	Reported on 10/22/2007 (S. 110-201)	Senate approved the bill on 11/7/2007 (by unanimous consent)	
United States-Israel Energy Cooperation Act (S. 838)	Sen. Smith (3/12/2007)	Reported on 9/17/2007 (S. Rpt. 110-176)	Placed on the Senate Legislative Calendar on 09/17/2007.	Bill was subsumed into H.R. 2272 which became P.L. 110-69
NOPEC Act (S. 879)	Sen. Kohl (3/14/2007)	Reported on 5/22/2007 (S. Rpt. 110-68)	Placed on the Senate Legislative Calendar on 5/22/2007	
NOPEC Act (H.R. 2264)	Rep. Conyers (5/10/2007)	Reported on 5/20/2007 (H. Rept. 110-160)	House approved on 5/21/2007 (345-72)	
Public Building Cost Reduction Act of 2007 (S. 992)	Sen. Boxer (3/27/2007)	Reported on 5/3/2007 (S. Rpt. 110-60)		
A Bill to Amend the Natural Gas Pipeline Act to Allow the Federal Coordinator for Alaska Natural Gas Transportation to Hire Employees more Efficiently (S. 1089)	Sen. Murkowski (4/11/2007)	Reported on 7/25/2007 (S. Rept. 110-178)		
Nuclear Safeguards and Supply Act of 2007 (S. 1138)	Sen. Lugar (4/18/2007)	Reported on 6/27/2007 (S. Rpt. 110-151)		

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
DOE Electricity Program Enhancement Act of 2007 (S. 1203)	Sen. Bingaman (4/24/2007)	Reported on 9/17/2007 (S. Rpt. 110-160)		
Energy Savings Act of 2007 (S. 1321)	Sen. Bingaman (5/7/2007)	Reported on 5/7/2007 (S. Rpt. 110-65)		
Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007 (S. 1419) (identical to S. Amdt. 1502)	Sen. Reid (5/17/2007)		Placed on the Senate Legislative Calendar on 05/17/2007. Subsumed into H.R. 6 (P.L. 110-140) as S. Amdt. 1502).	
A Bill to Require the Administrator of the Environmental Protection Agency to Conduct a Study of the Feasibility of Increasing the Consumption in the United States of Certain Ethanol-Blended Gasoline (S. 1828)	Sen. Inhofe (7/19/2007)	Reported on 9/24/2008 (S. Rept. 110-494)		
America's Climate Security Act of 2007 (S. 2191)	Sen. Lieberman (10/18/2007)	Reported on 12/5/2007 (No report number)		
Flood Insurance Reform and Modernization Act of 2007 (S. 2284)	Sen. Dodd (11/1/2007)	Reported 11/1/2007 (S. Rept. 110-214)	Amended to suspend purchase of SPR Oil passed on 5/13/2008 (97-1). Senate approved on May 13, 2008 (92-6).	
Climate Change Adaption Act (S. 2355)	Sen. Cantwell (11/14/2007)	Reported on 6/5/2008 (S. Rept. 110-347)		
Oil Pollution Amendment Act (S. 2700)	Sen. Lautenberg (3/4/2008)	Reported on 9/8/2008 (S. Rept. 110-445)		

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Consolidated Natural Resources Act of 2008 (S. 2739)	Sen. Bingaman (3/10/2008)		Senate approved on 4/10/2008 (91-4). House approved on 4/29/2008 (291-117).	S. 2739 became P. L. 110-229 on May 8, 2008.
National Defense Authorization Act for FY 2009 (S. 3001)	Sen. Levin (5/12/2008)	Reported on 5/12/2008 (S. Rept. 110-335)	Senate invoked cloture 9/8/2008 (83-0). Senate approved on 9/17/2008 (88-8). House approved on 9/24/2008 (392-39).	
Department of Energy National Security Act (S. 3004)	Sen. Levin (5/12/2008)		Senate approved on 9/17/2008 (by unanimous consent)	
Lieberman-Warner Climate Security Act of 2008 (S. 3036)	Sen. Boxer (5/20/2008)		Senate did not invoke cloture on 6/6/2008 (48-36)	
Energy and Water Development Appropriations Act for FY 2009 (S. 3258)	Sen. Dorgan (7/14/2008)	Reported on 7/14/2008 (S. Rept. 110-416)		
A Bill to Approve the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy (S. 3548)	Sen. Dodd (9/23/2008)	Reported on 9/23/2008 (no report number given)		

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Energy Independence and Security Act of 2007 (H.R. 6)	Rep. Rahall (1/12/2007)	Reported on 1/16/2007 (H. Rept. 110-2)	House approved on 1/18/2007 (234-163); Senate approved on 6/21/2007 (65-27); Revised and approved by the House on 12/6/2007 (235-181); Revised and failed approval by the Senate on 12/12/2007; Revised further and approved by the Senate on 12/13/2007 (86-8); House approved the revised bill on 12/18/2007 (314-100).	H.R. 6 became P.L. 110-140 on 12/19/2007.
H-Prize Act of 2007 (H.R. 632)	Rep. Lipinski (1/23/2007)	Reported on 6/5/2007 (H. Rept. 110-171)		Bill was subsumed into H.R. 6 which became P.L. 110-140.
A Bill to Direct GSA to Install a Photovoltaic System at DOE Headquarters (H.R. 798)	Rep. Oberstar (2/5/2007)	Reported on 2/12/2007 (H. Rept. 110-11)	House approved on 2/12/2007 (by a voice vote)	Bill was subsumed into H.R. 6 which became P.L. 110-140.
Energy Technology Transfer Act (H.R. 85)	Rep. Biggert (1/4/2007)	House reported on 2/28/2007 (H. Rept. 110-38); Senate reported on 7/25/2007 (S. Rept. 110-162)	House approved on 3/12/2007 (395-1)	
10,000 Teachers, 10 Million Minds Science and Math Scholarship Act (H.R. 362)	Rep. Gordon (1/10/2007)	Reported on 4/12/2007 (H. Rept. 110-85)	House approved on 4/24/2007 (389-22)	

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Sowing the Seeds Through Science and Engineering Research Act (H.R. 363)	Rep. Gordon (1/10/2007)	Reported on 2/28/2007 (H. Rept. 110-39)	House approved on 4/24/2007 (397-20)	
Advanced Fuel Infrastructure R&D Act (H.R. 547)	Rep. Gordon (1/18/2007)	Reported on 2/5/2007 (H. Rept. 110-7)	House approved on 2/8/2007 (400-3)	
Copper Valley Native Allotment Resolution Act of 2007 (H.R. 865)	Rep. Young (of Alaska) (2/6/2007)	Reported on 4/17/2007 (H. Rept. 110-91)	House approved on 4/17/2007 (by a voice vote)	
International Nuclear Fuel for Peace and Nonproliferation Act of 2007 (H.R. 885)	Rep. Lantos (2/7/2007)	Reported on 6/18/2007 (110-196)		
Global Climate Change Research Data and Management Act of 2007 (H.R. 906)	Rep. Udall (of Colorado) (2/7/2007)	Reported on 4/24/2008 (H. Rept. 110-605, Part 1)		
High-Performance Computing Amendment Act (H.R. 1068)	Rep. Baird (2/15/2007)	Reported on 2/28/2007 (H. Rept. 110-40)	House approved on 3/12/2007 (by a voice vote)	
Steel and Aluminum Energy Conservation Reauthorization Act (H.R. 1126)	Rep. Lipinski (2/16/2007)	Reported on 2/28/2007 (H. Rept. 110-41)	House approved on 3/12/2007 (by a voice vote). Senate E&NR Committee ordered the bill favorably reported on 7/25/2007 (S. Rept. 110-181)	
Federal Price Gouging Prevention Act (H.R. 1252)	Rep. Stupak (2/28/2007)		House approved on 5/23/2007 (284-141)	
Accountability in Contracting Act (H.R. 1362)	Rep. Waxman (3/6/2007)	Reported on 3/14/2007 (H. Rept. 110-47)	House approved on 3/15/2007 (347-73)	

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Water Resources Development Act of 2007 (H.R. 1495)	Rep. Oberstar (3/13/2007)	Reported on 3/29/2007 (H. Rept. 110-80)	House approved on 4/19/2007 (394-25). Senate approved its version on 5/16/2007 (91-4). Conference Report filed on 7/31/2007 (H. Rept. 110-280). House approved Conference Report on 8/1/2007 (381-40). Senate approved Conference Report on 9/24/2007 (81-12).	The President vetoed the bill on 11/2/2007. House overrode veto on 11/6/2007 (361-54). Senate overrode the veto on 11/8/2007 (79-14). The bill became law on 11/9/2007 (P.L. 110-114).
Mercury Export Ban Act of 2007 (H.R. 1534)	Rep. Allen (3/15/2007)	Reported on 10/30/2007 (H. Rept. 110-444)		
National Defense Authorization Act for FY 2008 (H.R. 1585)	Rep. Skelton (3/20/2007)	Reported in two parts (H. Rept. 110-146 and H. Rept. 110-146 Part 2)	House approved on 5/17/2007 (397-27). Senate approved on 10/1/2007 (92-3). Conference Report filed on 12/6/2007 (H. Rept. 110-477). House approved Conference Report on 12/12/2007 (370-49). Senate approved Conference Report on 12/14/2007.	President vetoed on 12/28/2007. See H.R. 4986 for further action.
Green Education Act of 2007 (H.R. 1716)	Rep. McCaul (3/23/2007)	Reported on 6/5/2007 (H. Rept. 110-173)		

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Department of Energy Carbon Capture and Storage Research, Development and Distribution Act of 2007 (H. R. 1933)	Rep. Udall (of Colorado) (4/18/2007)	Reported on 8/3/2007 (H. Rept. 110-301)		
21 st Century Competiveness Act / America COMPETES Act (H.R. 2272)	Rep. Gordon (5/10/2007)		House approved on 5/21/2007 (by voice vote). Senate approved on 7/19/2007 (by unanimous consent). Conference Report was filed on 8/1/2007 (H. Rept. 110-289). House approved Conference Report on 8/2/2007 (367-57). Senate approved Conference Report on 8/2/2007 (by unanimous consent).	H.R. 2272 became P.L. 110-69 on 8/9/2007
America COMPETES Act (S. 761)	Sen. Reid (3/5/07)		Senate approved the bill on 4/5/2007 (88-8).	Bill was subsumed into H.R. 2272 which became P.L. 110-69
Establishing the Advanced Research Projects Agency – Energy (ARPA-E) (H.R. 364)	Rep. Gordon (1/10/2007)	Ordered to be reported (as amended) on 5/23/2007.		Bill was subsumed into H.R. 2272 which became P.L. 110-69.
Advanced Geothermal Energy Research and Development Act of 2007 (H.R. 2304)	Rep. McNerney (5/14/2007)	Reported on 6/21/2007 (H. Rept. 110-203)		

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Marine Renewable Energy Research and Development Act of 2007 (H.R. 2313)	Rep. Hooley (5/15/2007)	Reported on 6/21/2007 (H. Rept. 110-202)		
Energy Policy Reform and Revitalization Act of 2007 (H.R. 2337)	Rep. Rahall (5/16/2007)	Reported on 8/3/2007 (H. Rept. 110-296, Part 1)		
Produced Water Utilization Act of 2008 (H.R. 2339)	Rep. Hall (of Texas) (5/16/2007)	Reported on July 30, 2008 (H. Rept. 110-801)		
Iran Sanctions Enabling Act of 2007 (H.R. 2347)	Rep. Frank (5/16/2007)	Reported on 7/30/2007 (H. Rept. 110-297, Part 1)	House passed on 7/31/2007 (408-6)	
Food and Energy Security Act of 2007 (H.R. 2419)	Rep. Peterson (5/22/2007)	Reported on July 23 (H. Rept. 110-256, Part 1)	House passed on 7/27/2007 (231-191). Senate passed (with an amendment) on 12/14/2007 (79-14). Conference Report filed on 5/13/2008 (H. Rept. 110-627). House passed CR on 5/14/2008 (318-106).	
International Climate Cooperation Re-engagement Act of 2007 (H.R. 2420)	Rep. Lantos (5/22/2007)	Reported on 6/28/2007 (H. Rept. 110-215)		
Carbon-Neutral Government Act of 2007 (H.R. 2635)	Rep. Waxman (6/7/2007)	Reported on 6/11/2007 (H. Rept. 110-297, Part 1)		
Energy and Water Development Appropriations Act for FY 2008 (H.R. 2641)	Rep. Visclosky (6/11/2007)	Reported in two parts on 6/25/2007 (H. Rept. 110-215, Parts 1 and 2)	House passed on 7/17/2007 (312-112)	Subsumed in the Consolidated Appropriations Act for FY 2008 (H.R. 2764)

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Consolidated Appropriations Act, 2008 (H.R. 2764)	Rep. Lowey (6/18/2007)		House passed on 6/22/2007 (241-178). Senate passed (with an amendment) on 9/6/2007 (81-12). House agreed as amended on 12/17 (253-154). House amended further to add military spending on 12/17/2007 (206-201). Senate passed as amended on 12/18/2007 (76-17). House passed on 12/19/2007 (272-142).	
Biofuels Research and Development Enhancement Act (H.R. 2773)	Rep. Lampson (6/19/2007)	Reported on 8/3/2007 (H. Rept. 110-302)		
Solar Energy Research and Advancement Act of 2007 (H.R. 2774)	Rep. Giffords (6/19/2007)	Reported on 8/3/2007 (H. Rept. 110-303)		
Renewable Energy and Energy Conservation Tax Act of 2007 (H.R. 2776)	Rep. Rangel (6/19/2007)	Reported on 6/27/2007 (H. Rept. 110-214)	House passed on 8/4/2007 (218-189)	
Green Jobs Act of 2007 (H.R. 2847)	Rep. Solis (6/25/2007)	Reported on 7/27/2007 (H. Rept. 110-262)		
New Direction for Energy Independence, National Security, and Consumer Protection Act (H.R. 3221)	Rep. Pelosi (7/30/2007)		House passed on 7/30/2007 (241-172). Senate passed on 4/10/2008 (84-12).	H.R. 3221 became P. L. 110-289 on July 30, 2008

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Energy Efficiency Improvement Act of 2007 (H.R. 3236)	Rep. Boucher (7/31/2007)	Reported on 8/3/2007 (H. Rept. 110-304, Part 1)		
Smart Grid Facilitation Act of 2007 (H.R. 3237)	Rep. Boucher (7/31/2007)	Reported on 8/3/2007 (H. Rept. 110-305, Part 1)		
A Bill to Promote the Development of Renewable Fuels Infrastructure (H.R. 3238)	Rep. Boucher (7/31/2007)	Reported on 8/3/2007 (H. Rept. 110-306, Part 1)		
A Bill to Promote Advanced Plug-in Hybrid Vehicles and Vehicle Components (H.R. 3239)	Rep. Boucher (7/31/2007)	Reported on 8/3/2007 (H. Rept. 110-307, Part 1)		
A Bill to Enhance Availability of Critical Energy Information (H.R. 3240)	Rep. Boucher (7/31/2007)	Reported on 8/3/2007 (H. Rept. 110-308)		
A Bill to Clarify the Amount of Loans to be Guaranteed under Title XVII of the Energy Policy Act of 2005 (H.R. 3241)	Rep. Boucher (7/31/2007)	Reported on 8/3/2007 (H. Rept. 110-309, Part 1)		
Industrial Energy Efficiency R&D Act of 2007 (H.R. 3775)	Rep. Lampson (10/9/2007)	Reported on 10/22/2007 (H. Rept. 110-401)	House passed, as amended, on 10/22/2007 (by a voice vote)	
Energy Storage Technology Advancement Act of 2007 (H.R. 3776)	Rep. Gordon (10/9/2007)	Reported on 10/22/2007 (H. Rept. 110-402)	House passed, as amended, on 10/22/2007 (by a voice vote)	

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Renewable Energy and Energy Conservation Tax Act of 2008 (H.R. 5351)	Rep. Rangel (02/12/2008)		House passed on 2/27/2008(236-182)	
Duncan Hunter National Defense Authorization Act for FY 2009 (H.R. 5658)	Rep. Skelton (3/31/2008)	Reported on 5/16/2008 (H. Rept. 110-652). Reported on 5/20/2008 (H. Rept. 110-652, Part 2).	House passed on 5/22/2008 (384-23)	
A Bill to Provide for a Study by the National Academy of Sciences of Potential Impacts of Climate Change on Water Resources and Water Quality (H.R. 5770)	Rep. Hall (4/10/2008)	Reported on 6/4/2008 (H. Rept. 110-685, Part 1)		
Strategic Petroleum Reserve Fill Suspension and Consumer Protection Act of 2008 (S. 6022)	Rep. Welch (5/12/2008)		House passed on 5/13/2008 (385-25). Senate passed on 5/14/2008 (by unanimous consent).	H.R. 6022 became P.L. 110-232 on 5/19/2008
Renewable Energy and Job Creation Act of 2008 (H.R. 6049)	Rep. Rangel (5/14/2008)	Reported on 5/20/2008 (H. Rept. 110-658)	House passed on 5/21/2008 (262-160). Senate did not invoke cloture on 6/10/2008 (50-44).	
Saving Energy Through Public Transportation Act of 2008 (H.R. 6052)	Rep. Oberstar (5/14/2008)	Reported on 6/20/2008 (H. Rept. 110-727, Part 1)	House passed on 6/26/2008 (322-98)	

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
Food, Conservation, and Energy Act of 2008 (H.R. 6124)	Rep. Peterson (5/22/2008)		House passed on 5/22/2008 (306-110). Senate passed on June 5, 2008 (77-15)	President vetoed on 6/18/2008. House overrode veto on 6/18/2008 (317-109). Senate overrode veto on 6/18/2008 (80-14). H.R. 6124 became P.L. 110-246 on 6/18/2008.
Alternative Minimum Tax Relief Act Of 2008 (H.R. 6275)	Rep. Rangel (6/17/2008)	Reported on 6/20/2008 (H. Rept. 110-728)		
A Bill Directing the Commodity Futures Trading Commission to Utilize All Its Authority, Including Its Emergency Powers to Curb Immediately the Role of Excessive Speculation in Any Contract Market Within the Jurisdiction and Control of the Commodity Futures Trading Commission, On or Through Which Energy Futures or Swaps are Traded (H.R. 6377)	Rep. Davis (of California) (06/26/2008)		House passed on 6/26/2008 (402-19)	

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
A Bill to Authorize the Chief Administrative Officer of the House of Representatives to Carry Out a Series of Demonstration Projects to Promote the Use of Innovative Technologies in Reducing Energy Consumption and Promoting Energy Efficiency and Cost Savings in the House of Representatives (H.R. 6474)	Rep. Lofgren (7/10/2008)	Reported on September 25, 2008 (H. Rept. 110-890)		
National Energy Security Intelligence Act of 2008 (H.R. 6545)	Rep. Cazayoux (7/17/2008)		House passed 7/23/2008 (414-0-2 Present)	
Over-Classification Reduction Act (H.R. 6575)	Rep. Waxman (7/23/2008)	Reported on July 30, 2008 (H.R. Rept. 110-809)		
Commodity Markets Transparency and Accountability Act of 2008 (H.R. 6604)	Rep. Peterson (7/24/2008)		House passed on 9/18/2008 (283-133)	
Comprehensive American Energy Security and Consumer Protection Act (H.R. 6899)	Rep. Rahall (9/15/2008)		House passed on 9/16/2008 (236-189)	
A Continuing Resolution for FY 2008 (H.J. Res. 52)	Rep. Obey (9/25/2007)		House passed on 9/26/2007 (404-14). Senate passed on 9/27/2007 (94-1).	H.J. Res. 52 became P.L. 110-92 on 9/29/2007

Title and Bill Number	Introduction	Committee Action	Floor Action	Public Law
A Continuing Resolution for FY 2008 (H.J. Res. 69)	Rep. Obey (12/12/2007)		House passed on 12/13/2007 (385-27). Senate passed on 10/13/2007 (by unanimous consent).	H.J. Res. 69 became P.L. 110-137 on 12/14/2007
A Continuing Resolution for FY 2008 (H.J. Res. 72)	Rep. Obey (12/18/2007)		House passed on 12/19/2007 (by a voice vote). Senate passed on 12/19/2007 (by unanimous consent).	H.J. Res. 52 became P.L. 110-149 on 12/21/2007

Some Bills of Interest to DOE introduced during the weeks of September 20 - 26:

HOUSE OF REPRESENTATIVES

- o Energy Policy Council, H.R. 6991, introduced by Rep. Larson (of Connecticut) establishes an Energy Policy Council to develop a National Energy Plan and monitor the implementation thereof.
- o Energy System, H.R. 7018, introduced by Rep. Inslee, promotes development of a 21st century energy system to increase United States competitiveness in the world energy technology marketplace.
- o Oil and Gas Leasing, H.R. 7030, introduced by Rep. Terry, makes available for oil and gas leasing, under the 2007-20012 oil and gas leasing program, areas of the OCS for which expenditures for such leasing are prohibited on September 19, 2008.
- o Domestic Oil and Gas Resources, H.R. 7032, introduced by Rep. Barton (of Texas), improves interagency coordination and cooperation in the processing of Federal permits for production of domestic oil and gas resources.
- o US-India Nuclear Energy Agreement, H.R. 7039, introduced by Rep. Ros-Lehtinen, approves the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy.
- o Electric Lines Affected by Hurricane Gustav, H.R. 7043, introduced by Rep. Cazayoux, provides for tax expensing of installing underground electric lines within the Hurricane Gustav disaster area.
- o Civilian Energy Conservation Corps, H.R. 7050, introduced by Rep. Inslee, creates a 21st Century Civilian Energy Conservation Corps focused on promoting and improving the energy conservation and efficiency of residential and public buildings and spaces and creates economic opportunity for disconnected youth.
- o Oil and Gas Production, H.R. 7051, introduced by Rep. Markey, prohibits issuance of any lease or other authorization by the Federal Government that authorizes exploration, development, or production of oil or natural gas in any marine national monument or national marine sanctuary or in the fishing grounds known as Georges Bank in the waters of the United States.
- o Energy Tax Credits, H.R. 7060, introduced by Rep. Rangel, provides incentives for energy production and conservation, extends certain expiring tax provisions, and provides individual income tax relief.
- o US-India Nuclear Energy Agreement, H.R. 7061, introduced by Rep. Berman, approves the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy.

- o Alternative Fueled Vehicles, H.R. 7064, introduced by Rep. Kagen, increases the credit amount for new qualified alternative fuel motor vehicles weighing more than 26,000 pounds and to increase the credit for certain alternative fuel vehicle refueling properties.
- o US-India Nuclear Energy Agreement, H.R. 7081, introduced by Rep. Berman, approves the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy.
- o Nuclear Power, H.R. 7086, introduced by Rep. Barrett (of South Carolina), helps our Nation meet our growing security needs and strengthen our energy security through the development of nuclear power in the United States.
- o Biogas, H.R. 7097, introduced by Rep. Higgins, promotes biogas production.
- o Energy Costs, H.R. 7101, introduced by Rep. Michaud, establishes a task force to lower energy costs for the forest products industry and similar manufacturing operations.
- o Oil and Gas Leasing, H.R. 7124, introduced by Rep. Shadegg, establishes procedures for causes and claims relating to the leasing of Federal lands (including submerged lands) for the exploration, development, production, processing, or transmission of oil, natural gas, or any other source or form of energy.
- o Electric Energy Generation, H.R. 7142, introduced by Rep. Delahunt, provides for assessment and identification of sites as appropriate for the location of offshore renewable electric energy generation facilities, to provide funding for offshore renewable electric energy generation projects.
- o Greenhouse Gas, H.R. 7146, introduced by Rep. Inslee distributes emission allowances under a domestic climate policy to facilities in certain domestic energy-intensive industrial sectors to prevent an increase in greenhouse gas emissions by manufacturing facilities located in countries without commensurate greenhouse gas regulation.
- o FERC, H.R. 7161, introduced by Rep. Murphy (of Connecticut), transfers the currently terminated FERC licenses for Projects Numbered 10822 and 10823 and reinstate them to the Town of Canton, Connecticut.

SENATE

- o Tax Credit for Residential Energy Costs, S. 3561, introduced by Sen. Clinton, provides a refundable credit against income tax to assist individuals with high residential energy costs.
- o Alternative Fueled Vehicles, S. 3562, introduced by Sen. Wicker, amends the CAA to provide a waiver of requirements relating to recertification kits for the conversion of vehicles into vehicles powered by natural gas or liquefied petroleum gas.
- o Oil and Natural Gas Exploration, S. 3576, introduced by Sen. Kerry, prohibits the issuance of any lease or other authorization by the Federal Government that authorizes exploration, development, or production of oil or natural gas in any marine national monument or national marine sanctuary or in the fishing grounds known as Georges Bank in the waters of the United States.

- o Energy Price Speculation, S. 3577, introduced by Sen. Levin, amends the Commodity Exchange Act to prevent excessive price speculation with respect to energy and agricultural commodities.
- o Nuclear, S. 3578, introduced by Sen. Ensign, establishes a commission to assess the nuclear activities of the Islamic Republic of Iran.
- o Clean Air Act, S. 3591, introduced by Sen. Dole, amends the CAA to improve motor fuel supply and distribution.
- o Plug-In Hybrid Vehicles, S. 3618, introduced by Sen. Collins, establishes a research, development, demonstration, and commercial application program to promote research of appropriate technologies for heavy duty plug-in hybrid vehicles.
- o Greenhouse Gas, S. 3624, introduced by Sen. Carper, amends Title 49, United States Code, to require States and metropolitan planning organizations to develop transportation greenhouse gas reduction plans to reduce greenhouse gas emissions from the transportation sector.

NOMINATIONS

- o The Senate received the nomination of F. Chase Hutto III to be the Assistant Secretary of Energy for International Affairs and Domestic Policy on September 26, 2008.

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CASE INDEX

In Adkins v. Divested Atomic Corporation (S.D. Ohio), a putative class action lawsuit against the former M&O contractors at the Portsmouth Gaseous Diffusion Plant in which the plaintiffs are seeking damages for diminished property value and emotional distress allegedly caused by emissions from the plant, the court issued an order setting the commencement of trial for November 1, 1999. Additionally, the court advised that a detailed scheduling order will follow its decision on pending motions in the Boggs v. Divested Atomic Corporation case. The Adkins plaintiffs are former members of the decertified class in Boggs, who now are asserting claims essentially identical to those in Boggs. (A. Fingeret, GC-31, 586-5678)

Aiken County v. Bodman (D.S.C.). The court further extended its stay of consideration of Aiken County's motion to alter or amend the judgment until April 1, 2009, to allow the County time to evaluate whether Congress will appropriate adequate funding for the MOX program. The court had ruled that there was no final agency action for the court to review under the Administrative Procedure Act, and the matter was not ripe for adjudication. This is an action alleging that DOE has violated section 3182 of the FY 2003 Defense Authorization Act, as amended by the Energy and Water Development Appropriation Act, 2006, relating to the construction and operation of the mixed-oxide (MOX) plutonium processing facility at the Savannah River Site. The County alleged that DOE failed to submit a corrective action plan to Congress, to suspend further transfers of plutonium to SRS, and to submit a response to Congress setting forth options for removing from South Carolina the plutonium that has been sent there. The County sought a declaratory judgment and an injunction suspending all shipments of defense plutonium and defense plutonium materials to SRS until DOE meets the statutory requirements. (M. Kasischke, GC-31, 586-8334)

Alabama Power Co., Georgia Power Company, Southern Nuclear Operating Co. v. U.S. II (Fed. Cl.). A complaint was filed. This is the second case filed by the plaintiffs seeking damages for the Department's delay in beginning to accept spent nuclear fuel. The first case, styled Southern Nuclear v. United States has been tried and is on appeal to the Federal Circuit. This second complaint, filed in accordance with the Federal Circuit's instruction in its Indiana Michigan opinion, which directs utility plaintiffs to bring separate actions for damages as they are incurred, seeks damages for the time period January 1, 2005 through April 1, 2008. (J. Taylor, GC-31, 586-7530)

Amigos Bravos v. DOE (D.N.M.). The court granted an extension of time to file the answer to the complaint naming DOE, NNSA, and its contractor, Los Alamos National Security, LLC, alleging violations of the Clean Water Act at Los Alamos Natural Laboratory. The answer is now due June 28, 2008. (M. Kasischke, GC-31, 586-8334)

Amirmokri v. Secretary, DOE (D. Md.). A complaint was filed. This is a Title VII action in which the plaintiff alleges unlawful discrimination on the basis of national origin and retaliation. (J. Schlaifer, GC-31, 586-8709)

Appalachian Voices v. DOE (D.D.C.). The Government filed a reply brief in support of its motion to dismiss the plaintiffs' amended complaint adding an Endangered Species Act claim. This is an action by two environmental groups against DOE and Treasury (IRS) alleging a NEPA violation for the agencies' failure to assess the environmental impacts of a tax credit program for coal-based energy projects authorized by the Energy Policy Act of 2005. (J. Masters, GC-31, 586-3415)

Arizona Corp. Commission v. DOE (9th Cir.). The Arizona Corp. Commission filed a petition for review of DOE's National Interest Electric Transmission Corridor (NIETC) designation. (B. Mumme, GC-31, 586-8713)

Arizona Public Service v. United States (Fed. Cl.). The court granted the parties' joint motion to amend the discovery schedule so that discovery is extended through September 15, 2008, and discovery related to damages is extended through October 15, 2008. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

In Asay v. DOE (D. Idaho), an FTCA action in which the plaintiff alleges personal injury from defective and hazardous conditions on a stairwell, we filed a reply to the plaintiff's opposition to our motion to dismiss. (T. West, GC-31, 586-5677)

Atlantic City Electric Company v. United States; Delmarva Power v. US. (Fed. Cir.). The Federal Circuit affirmed the trial court's grant of summary judgment for the Government in this consolidated case finding that the Government had properly waived its right, under the Assignment of Claims Act, to invalidate assignments, including takings claims that former minority owners Delmarva Power and Atlantic City Electric had previously assigned to PSEG Nuclear, and accordingly, the minority owners had no claims to pursue against the Government. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

BASF Catalysts LLC v. United States (D. Mass.). The court granted the parties' joint motion for approval and entry of the consent decree executed by the parties, and dismissed the case as provided in the consent decree. The court had earlier stayed the proceedings until the U.S. Supreme Court issued its decision in United States v. Atlantic Research Corp. The Supreme Court recently issued its decision, holding that a potentially responsible party can recover voluntarily-incurred response costs from another PRP under CERCLA section 107(a). This is an action to recover environmental response costs at the former Engelhard facility in Plainville, Mass., by asserting claims under CERCLA, RCRA, and federal common law. (S. Dove, GC-31, 586-0905)

Boggs v. Goodyear Atomic Corp. (S.D. Ohio). The court entered an order denying the plaintiffs' renewed motion for class certification. This is an action lawsuit against the former M&O contractors at the Portsmouth Gaseous Diffusion Plant, in which the plaintiffs are seeking damages for alleged diminution of property values resulting from emissions from the plant. The court previously issued an expanded opinion and order in which it dismissed the plaintiffs' claims concerning the release of radioactivity, nuisance, trespass, and medical monitoring, and response costs under CERCLA, as well as negligence and strict liability based upon ultrahazardous or abnormally dangerous activity due to the release of radioactivity from the plant. (A. Fingeret, GC-31, 586-5678)

Boston Edison Company v. U.S. and Entergy Nuclear Generation Co. v. United States (Fed. Cir.). The court issued an order holding in abeyance the Government's motion for a stay pending disposition of jurisdictional issues and also temporarily stayed the briefing schedule. In this case, the two plaintiffs, Boston Edison, the past owner of the Pilgrim Nuclear plant in Massachusetts, and the present owner, Entergy Nuclear, both sought delay damages from the Government for the same facility. The trial court consolidated the cases to ensure that neither plaintiff received a double recovery for its claims. Boston Edison sought damages of \$86.2 million for diminution in value reflected in onsite storage costs, additional spent fuel pool storage racks, and the diminution of the purchase price of Pilgrim due to the Department's delay. The trial court awarded Boston Edison \$40 million for the onsite fuel storage costs included in the decommissioning fund that Boston Edison paid to Entergy upon the sale of Pilgrim, but rejected Boston's claims for additional storage racks and diminution of the purchase price. The trial court declined to determine the Government's offset of damages from Entergy Nuclear, finding that the claim must be pursued in a separate action. This is a suit for damages for breach of the Standard Contract for disposal of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Brevetti v. Chemical Waste Management, U. S. Department of Energy and U.S. Department of Defense (W.D. N.Y.) (MDL 875). The MDL court issued an order requiring plaintiff Brevetti to file a report with the court no later than December 1, 2007. This is an action claiming injury from workplace exposure to asbestos that has been brought against the successor in interest to two corporations that allegedly had contractual relationships with DOE and DOD, by a former employee of CWM. In that report he must identify all named defendants against whom resolution of his claim has been achieved as well as all remaining defendants, and provide a medical diagnosing report upon which he relies for the prosecution of his claim against the remaining defendants. Failure to do so will result in dismissal of the claim pursuant to F.R.C.P. 41(b). The plaintiff claims injury arising from workplace exposure to asbestos. However, the plaintiff has failed to assert jurisdiction under the Federal Tort Claims Act and has not presented an administrative claim to DOE. (D. Hughes, GC-31, 586-0258)

Brodsky v. Bodman (D. Nev.). The court granted DOE's motion to dismiss one cause of action but denied the motion with respect to eight causes of action. This is an action under Title VII of the Civil Rights Act and the ADEA, alleging that the plaintiff has been harassed because of his race, color, religion, sex and age, and in retaliation for prior EEO activity. (J. Schlaifer, GC-31, 586-8709)

Building and Construction Trades v. Chao (D.D.C.). The Government defendants filed a reply in support of their motion to dismiss the amended complaint. The plaintiff labor union challenges a decision by DOE that the Davis Bacon Act does not apply to the construction of certain privately financed non-DOE buildings in Oak Ridge, Tennessee. (D. Crockett, GC-31, 586-1465)

BWX Technologies v. United States (Fed. Cl.). The parties agreed to a settlement that provides that BWXT will dismiss with prejudice the current case pending against the Government for damages through January 28, 2004. BWXT can file a new action for damages incurred after that date. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

California Energy Commission v. DOE (9th Cir.). CEC filed its reply brief. CEC has petitioned the Ninth Circuit Court of Appeals for review of DOE's denial of CEC's petition for exemption from federal preemption of California's Water Conservation Standards for residential clothes washers. DOE had published that denial at 71 Fed. Reg. 78,157 (December 28, 2006). (D. Hughes, GC-31, 586-0258)

California Energy Commission v. DOE (9th Cir.). The court has set November 17, 2008, as the date for oral argument. The CEC has petitioned the Ninth Circuit Court of Appeals for review of DOE's denial of CEC's petition for exemption from federal preemption of California's Water Conservation Standards for residential clothes washers. DOE had published that denial at 71 Fed. Reg. 78,157 (December 28, 2006). (D. Hughes, GC-31, 586-0258)

California Sportfishing Protection Alliance v. Steven Chu and Lawrence Berkeley National Laboratory (N.D. Cal.). The parties have reached a settlement agreement in principle. In this action, the plaintiffs filed a complaint alleging that the defendant laboratory and its Director, Steven Chu, named in his official capacity, violated the Clean Water Act, principally by improperly discharging contaminated storm water. (M. Franklin, GC-31, 586-5982 and M. Kasischke, GC-31, 586-9505)

Canal Electric Co. v. United States (Fed. Cl.) is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. A newly assigned judge denied the Government's motion to stay pending a final judgment on takings claims but nevertheless stayed the case until the court resolves whether it will enter a final judgment on the plaintiff's takings claim. (J. Taylor, GC-31, 586-7530)

CARD v. Washington TRU Solutions (Ct. App. N.M.). A mediation meeting is scheduled for April 18, 2008. The court previously denied DOE's motion to intervene but granted DOE leave to file an amicus curiae brief. In this case, Citizens for Alternatives to Radioactive Dumping has filed an appeal to the Court of Appeals for the State of New Mexico from the New Mexico Department of the Environment's decision approving a permit modification allowing DOE to ship remote handled transuranic waste to WIPP. (M. Kasischke, GC-31, 586-8334)

Carolina Power & Light Co. and Florida Power & Light Co. v. United States (Fed. Cir.). The Government filed a notice of appeal. The trial court recently granted in part and denied in part the Government's motion for reconsideration of the plaintiff's damages award, reducing the amount by approximately \$57,000. Previously, the court issued an opinion and order awarding plaintiffs, both subsidiaries of Progress Energy, \$83 million of the \$91 million they had sought for mitigation damages for costs they had incurred from January 31, 1998 through December 31, 2005, due to the Government's delay in disposal of their spent nuclear fuel. The reactors included one reactor at the Harris, North Carolina plant; two reactors at the Brunswick, North Carolina plant; one reactor at the Robinson, South Carolina plant and one reactor at the Crystal River, Florida plant. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Center for Biological Diversity v. DOE (C.D. Cal.). The court granted the Government's motion to dismiss the plaintiff's complaint for lack of subject matter jurisdiction. In this case, the plaintiff sought declaratory and injunctive relief, challenging DOE's October 2007 Southwest National Interest Electric Transmission Corridor (SW NIETC) designation. The plaintiff contended: (1) DOE violated NEPA in designating the corridor; (2) DOE failed to comply with Section 7 of the Endangered Species Act; (3) DOE failed to consider alternatives to a NIETC designation in violation of 16 U.S.C. 824p(a)(2); and (4) DOE exceeded its authority under 16 U.S.C. 824p(a)(2) by including areas in the SW NIETC that are not "experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers." (B. Mumme, GC-31, 586-8713)

CH2M Hill Hanford Group, Inc. v. United States (Fed. Cl.). The plaintiff filed its first interrogatories and request for production of documents. This is an appeal from a contracting officer's final decision denying the plaintiff's claim for a \$10.5 million equitable adjustment based on DOE's alleged failure to allow the plaintiff to earn contract "fee." As grounds for its claims, the plaintiff alleges that DOE failed to seek appropriate funding from Congress and improperly reallocated work following a reduction in funding. (D. Crockett, GC 31, 586-1465)

Chevron U.S.A. v. United States (Fed. Cir.). Pursuant to the court's order, Chevron filed a brief in opposition to the Government's petition for a writ of mandamus. The Government's petition asks the court of appeals to vacate the trial court's order concerning privileged documents withheld by the Government from production to Chevron. It raises an issue of first impression: whether the trial court abused its discretion in creating a new "misconduct" exception to the established crime/fraud exception to the attorney-client privilege and applying it where the alleged misconduct is at most evidence of a breach of contract. The petition also seeks a ruling that the trial court erred by ordering DOE to produce the factual content of DOE draft decisions otherwise conceded by the trial court to be subject to the deliberative process privilege. The petition further seeks to vacate the trial court's ruling that the work-product privilege does not apply to factual material in documents exchanged in the course of litigation where there are no "mental impressions, conclusions, opinions or legal theories." In this action Chevron alleges that the Department of Energy has breached a May 1997 agreement concerning the determination of the final equity shares of DOE and Chevron Texaco in the Elk Hills Field, an oil and gas producing property. (P. Michael, GC-31, 586-1303 and A. Mitrani, GC-31, 586-5550)

Christos v. United States (Fed. Cir.) is a class action complaint for breach of contract in which the plaintiffs allege they were involuntarily terminated by Westinghouse Savannah River Co. (WSRC) and are intended third-party beneficiaries of the "severance pay" provisions of DOE's M&O contract with WSRC. The Federal Circuit affirmed the district court's dismissal of the case. (T. West, GC-31, 586-5677)

Chugach Electrical Association v. U.S. Department of Energy (9th Cir.). Motions to intervene were filed by ConocoPhillips Alaska Natural Gas Corporation, Marathon Oil Company, Alaska Natural Gas Company, and the State of Alaska. The petition for review challenges DOE's orders granting a joint request by ConocoPhillips and Marathon Oil for a short-term (2 year) "blanket" authorization to export liquefied natural gas from the Kenai Peninsula in Alaska to Japan and other points on either side of the Pacific Rim. The petitioner's brief is due November 10, 2008, and our brief is due December 8, 2008. However, Chugach has requested an extension of time until December 22, 2008, to file its opening brief. (B. Mumme, GC-31, 586-8713)

Cleveland Electric Illuminating Co. v. United States (Fed. Cl.). The court held a scheduling conference. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Coalition on West Valley Nuclear Wastes v. DOE (2d Cir.). The plaintiffs' reply brief was filed. The district court previously granted the Government's motion for summary judgment and dismissed the case. The court held that DOE's decision to prepare two EIS's (for waste management and site closure) neither violated the parties' 1987 stipulation nor constituted impermissible segmentation under NEPA. This is an action by a citizens' group for declaratory and injunctive relief alleging violations of NEPA and a 1987 stipulation in connection with waste management and closure activities at the West Valley site. (J. Masters, GC-31, 586-3415)

Colorado Environmental Coalition v. DOE (D. Colo.). DOE filed its answer to the complaint. This is a NEPA action alleging that DOE's Uranium Leasing Program Final Programmatic Environmental Assessment and FONSI failed to consider adequately the environmental impacts of expansion of the uranium leasing program. The plaintiffs request that the court issue an injunction prohibiting implementation of the leasing program and directing DOE to take all necessary steps to avoid further impacts to public lands by the leasing program. (S. Dove, GC-31, 586-0905)

The Commonwealth of Pennsylvania v. DOE (9th Cir.). Pennsylvania filed a petition for review of DOE's NIETC designation. (B. Mumme, GC-31, 586-8713)

The Commonwealth of Virginia v. DOE (4th Cir.). The Fourth Circuit transferred the case to the Ninth Circuit Court of Appeals, in which earlier filed petitions for review of DOE's National Corridor designation were previously consolidated. (B. Mumme, GC-31, 586-8713)

Communities Against Regional Interconnect v. DOE (D.C. Cir.). The Fourth Circuit granted the Government's unopposed motion to transfer the case to the Ninth Circuit Court of Appeals. This petition for review involves DOE's National Interest Electric Transmission Corridor designation. (B. Mumme, GC-31, 586-8713)

Comprehensive Health Services, Inc. v. United States (Fed. Cl.) is an action in which a disappointed bidder for an occupational medical services contract at DOE's Hanford Site is challenging DOE's contract award. Previously, the court denied the plaintiff's motion for injunctive relief. The court granted the plaintiff's unopposed motion for voluntary dismissal with prejudice. (T. West, GC-30, 586-5677)

Confederated Tribes and Bands of The Yakima Nation v. United States (E.D. Wash.). The court denied DOE's motion to dismiss two of the plaintiffs' claims on the ground that they were unripe (i.e., premature). It held that the plaintiffs' claim for natural resource damages assessments costs became ripe when such costs were incurred. And it held that it need not determine whether the plaintiffs' claim for natural resource damages is premature since it has stayed proceedings on that claim. This a CERCLA suit seeking damages for the claimed loss of natural resources at the Hanford Nuclear Reservation allegedly caused by the release of hazardous substances. (T. West, GC-31, 586-5677)

Connecticut Yankee v. United States (Fed. Cir.). The U.S. Court of Appeals for the Federal Circuit issued three separate opinions in the appeals of the three Yankee cases, the two Pacific Gas and Electric cases and Sacramento Municipal Utility District affirming-in-part, reversing-in-part and remanding those cases to their respective trial courts for further proceedings consistent with the Federal Circuit's decisions. The court remanded the cases back to the trial courts so that they can apply an acceptance rate before determining whether the Government's partial breach of contract was a substantial factor in causing the plaintiffs' damages. The Circuit Court went on to determine that the appropriate rate to use was the acceptance rate issued by the Department in the 1987 Acceptance Priority Ranking. The court also determined that the plaintiffs could recover costs for on-site storage of Greater-Than-Class-C (GTCC) waste, but that the Government is not necessarily liable for all GTCC disposal costs. The court also made case-specific rulings on issues such as set-offs of one-time fee payments and labor costs that will be applied by the lower courts. This is a suit for damages for alleged breach of contract as a result of DOE's failure to begin disposing of spent nuclear fuel. The trial court previously issued an opinion and order entering judgment in favor of the three plaintiff utilities for a total of approximately \$143 million in damages for the Department's breach of contract resulting from the delay in beginning to accept spent fuel for disposal. These cases, involving shut down reactors (one at each site) owned by Yankee Atomic, Maine Yankee, and Connecticut Yankee, were tried in August 2004. The opinion and order applies to all three cases. Individual damage amounts awarded to each utility are: Yankee Atomic--\$32,866,087; Connecticut Yankee--\$34,154,879; and Maine Yankee--\$75,774,554. Because the claims were for partial breach of contract, the damages are limited to actual mitigation costs incurred (for reracking and constructing ISFSIs) through 2001 for Yankee Atomic and Connecticut Yankee and through 2002 for Maine Yankee. The three utilities had sought \$428 million for mitigation and future damages. (J. Taylor, GC-31, 586-7530)

Connecticut Yankee v. United States II (Fed. Cl.). The court granted the Government's motion to stay all proceedings until 30 days after resolution of pending related appeals. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. This is the second case filed by the plaintiff seeking damages for the Department's delay. The first case, in which the plaintiff sought damages for the time period 1998 through December 2001, has been decided by the trial court and is on appeal to the Federal Circuit. This second complaint, filed in accordance with the Federal Circuit's instruction in its Indiana Michigan opinion directing utility plaintiffs to bring separate actions for damages as they are incurred, seeks damages for the time period January 1, 2002, through some unspecified date prior to trial. (J. Taylor, GC-31, 586-7530)

Consolidated Edison Company of New York, Inc. v. United States (Fed. Cl.). This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. The court has granted the Government's motion for joinder of this case with Entergy Nuclear Indian Point 2, LLC v. United States and scheduled a trial to run from June 1, 2009 through June 26, 2009. (J. Taylor, GC-31, 586-7530)

Constellation' Generation Co. v. United States (Fed. Cl.). The parties filed a joint status report requesting a continuance of the stay until December 15, 2008. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Consumers Energy Co. v. U.S. (Fed. Cl.). The court issued a discovery schedule. This is a suit for breach of contract for failure to begin disposal of the plaintiff's spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Cook v. Rockwell International Corp. (10th Cir.). The court of appeals denied the defendants' motion requesting the court to review their pending motion to vacate judgment, dismiss appeals, and remand the case for lack of appellate jurisdiction, based upon the lack of finality of the district court's ostensible Final Judgment. The court has not yet established a briefing schedule. This is a class action tort suit against DOE's former contractors at Rocky Flats brought on behalf of local property owners who allege that releases of radioactive materials diminished their property values. A jury rendered a verdict for the property-owner class in February, 2006, finding the defendants liable for trespass and nuisance, and the court recently issued a Final Judgment pursuant to Rule 54(b), Fed. R. Civ. P. against the defendants in the amount of \$926.1 million (inclusive of pre-judgment interest). The district court previously stayed the judgment without bond until the appeal process is completed. (A. Fingeret, GC-31, 586-5678)

Crane Co. v. United States (D. Ariz.) is an action in which the plaintiff asserts that various government agencies, including DOE, have CERCLA liability related to the plaintiff's manufacturing activities on the northern portion of the Phoenix/Goodyear Airport Superfund site. The court entered a consent decree agreed upon by the parties. (T. West, GC-31, 586-5677)

Curtis-Wright Electro Mechanical Corporation v. United States (W.D. Pa.). The parties have reached a tentative settlement which has been incorporated into a draft consent decree. A finalized consent decree will be filed with the court once all parties to the litigation have executed the consent decree. This is a CERCLA suit alleging that various Government agencies, including DOE's predecessor agency, the AEC, are responsible for radiological contamination at a facility in Cheswick, Pennsylvania. CBS Corp. was recently impleaded as a third party defendant. (T. West, GC-31, 586-5677)

Dairyland Power Cooperative v. United States (Fed. Cl.). The parties filed their post-trial briefs. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Day v. N.L.O. (S.D. Ohio) is a class action lawsuit by workers at the Fernald Plant that the Government has settled. The next periodic settlement trustees' report is scheduled to be presented on October 3, 2001. (A. Fingeret, GC- 31, 586-5678)

Delmarva Power and Light Company v. United States (Fed. Cir.). The Federal Circuit affirmed the trial court's grant of summary judgment for the Government in this consolidated case finding that the Government had properly waived its right, under the Assignment of Claims Act, to invalidate assignments, including takings claims that former minority owners Delmarva Power and Atlantic City Electric had previously assigned to PSEG Nuclear, and accordingly, the minority owners had no claims to pursue against the Government. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Detroit Edison v. U.S. (Fed. Cl.). The Government filed its answer to the plaintiff's amended complaint. Discovery closes on October 1, 2009; a pretrial conference will be held December 1, 2009; and a trial is set to run from December 7, 2009 through December 18, 2009. This is a suit for damages for breach of contract arising from DOE's failure to begin disposing of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

In Re: Distributed Energy Systems Corp. And Northern Power Systems, Inc. (Bankr. D. Del.). The court issued an order in this Chapter 11 bankruptcy proceeding approving the debtor's proposed assumption and assignment of certain executory contracts in connection with the proposed sale of assets of Northern Power Systems and stock of Proton Energy Systems. The order provided, however, that the debtor's contracts and agreements with the federal government shall be treated and administered in the ordinary course of business as if the debtor's bankruptcy cases have never been filed; moreover, the government will not be required to novate or consent to transfer of any of the debtor's government contracts or agreements. (M. Franklin, GC-31, 586-5982)

Dolan v. United States of America (S. Ct.). The Supreme Court denied the plaintiff's petition for certiorari. The Sixth Circuit had affirmed the district court's dismissal of plaintiff's complaint, holding that the United States had been appropriately substituted as a defendant and that the complaint failed to state a claim for which relief may be granted against the United States under the Federal Tort Claims Act. In addition, the court held that the plaintiff's Bivens claim was barred by the applicable Tennessee statute of limitations. The plaintiff had filed this action for damages against the United States, an assistant United States Attorney, and an agent of the DOE Office of Inspector General arising out of a criminal prosecution that was subsequently dismissed. (D. Hughes, GC-31, 586-0258)

Dominion Energy Kewaunee, Inc. v. U.S. (formerly captioned as Wisconsin Public Service Corp. v. United States) (Fed. Cl.). The court held a status conference. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Dominion Resources (Northeast) v. United States (Fed. Cl.). The plaintiffs filed their post-trial brief. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Dominion Resources (Virginia) v. United States (Fed. Cl.). The plaintiffs filed their post-trial brief. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

E.I. DuPont de Nemours v. U.S. (S.Ct.). The court approved the parties' joint settlement agreement and dismissed the case. This a CERCLA action against DOE (as successor to the AEC) and other federal agencies concerning the cleanup of several facilities that engaged in various manufacturing activities during World War I and World War II. (J. Masters, GC-31, 586-3415)

El-Ganayni v. U.S. Department of Energy (W.D. Pa). The court dismissed the plaintiff's claims that his security clearance was terminated in retaliation for his exercise of his rights of free speech and free exercise of religion in violation of the First and Fifth Amendments. However, the court took under advisement the plaintiff's claim challenging the procedure by which his clearance was summarily terminated, and ordered further briefing addressing that issue by November 14, 2008. In this matter, the plaintiff's clearance was terminated by the Acting Deputy Secretary under Executive Order 12968 in the interests of national security, and pursuant to a finding that the notice and hearing demanded by the plaintiff "cannot be made available . . . without damaging the interests of national security by revealing classified information." (A. Fingeret, GC-31, 586-5678)

In El Paso Electric Company, (Bankr. W.D. Tex.), a case in which El Paso Electric Company filed for protection under Chapter 11 of the Bankruptcy Code, El Paso is expected to file a proposed order stating that it will "assume," *i.e.*, perform, its obligations under its existing DOE contracts. (M. Madarang, GC-31, 586-6488)

El Paso Natural Gas Company v. United States (D.D.C.). EPNG filed its opposition to the Government's motion to dismiss the plaintiff's UMTRCA claim for lack of subject matter jurisdiction. This is an action for declaratory and injunctive relief, civil penalties, and cost reimbursement against DOE and a number of other federal agencies under the Uranium Mill Tailings Radiation Control Act ("UMTRCA") and the Resource Conservation and Recovery Act ("RCRA"). EPNG challenges DOE's decision not to designate certain sites containing residual radioactive materials from the Tuba City (Arizona) Uranium Mill as "vicinity properties" eligible for remediation under UMTRCA, and asserts that the agencies' treatment, storage, and disposal of hazardous wastes near the Mill have endangered health or the environment in violation of RCRA. (B. Mumme, GC-31, 586-8713)

Energy Northwest v. United States (Fed. Cl.). The court vacated its previous pretrial schedule and trial date and rescheduled the trial to begin on February 2, 2009. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Energy Security of America Corp. v. United States (Fed. Cl.). The plaintiff filed an opposition to our motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. Our reply is due on November 3, 2008. This is an action alleging that DOE's failure to fund a demonstration project for the plaintiffs' patented process of gasifying coal constituted a "taking" of that patent under the Fifth Amendment. (D. Crockett, GC-31, 586-1465)

Entergy Corporation v. EPA; PSEG Fossil LLC v. Riverkeeper, Inc.; Utility Water Group v. Riverkeeper, Inc. (S. Ct.). Oral argument is set for Monday, December 1, 2008. Respondent EPA filed a merits brief in support of the petitioners, arguing that the Second Circuit's ruling should be reversed. The Supreme Court granted the petitions for certiorari, limited to the question whether Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), authorizes EPA to compare costs and benefits in determining the "best technology available for minimizing adverse environmental impact" at cooling water intake structures. (M. Johnston, GC-30, 586-8700)

Entergy Gulf States v. United States (Fed. Cl.). The court has continued the stay in the case through January 7, 2009, at which time a joint status report is due. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Entergy Nuclear Fitzpatrick, LLC v. United States (Fed. Cl.). The court advised the parties to participate in the court's November 12, 2008, coordinated discovery meeting. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Entergy Nuclear Indian Point 2, LLC v. United States (Fed. Cl.). The plaintiff filed a motion for leave to file an amended and supplemental complaint. The court has set a pretrial conference for May 21, 2009, and trial is set to run from June 1, 2009 through June 26, 2009. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. The parties filed their proposed pretrial orders. (J. Taylor, GC-31, 586-7530)

Entergy Nuclear Vermont Yankee v. United States (Fed. Cl.). The court has issued a discovery schedule providing that discovery will begin on February 8, 2008, and conclude on February 20, 2009. The court previously granted the plaintiff's summary judgment motion on liability and denied the Government's summary judgment motions regarding the assignment of the standard contract to Entergy Nuclear Vermont Yankee and payment of the one-time fee finding that the contract is assignable and that the plaintiff's one-time fee is not due until there is a valid acceptance schedule setting an acceptance date for the spent nuclear fuel. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Fernald Litigation (S.D. Ohio) is a class action lawsuit that the Government has settled. The settlement trustees' periodic report will be presented to the court on December 3, 2003. (A. Fingeret, GC- 31, 586-5678)

FFTC Restoration Company, LLC v. United States (Fed. Cl.). The plaintiff filed a response to our motion to dismiss and alternative motion for judgment based on the administrative record. This is an action seeking bid preparation costs, bid protest costs, and attorney's fees with respect to a procurement that was cancelled. (D. Crockett, GC-31, 586-1465)

Florida Power Company v. United States (Fed. Cl.). A Court of Federal Claims judge issued an order in this and 22 other pending spent nuclear fuel cases setting a discovery conference on November 12, 2008. Prior to the conference, the parties must submit a joint status report that addresses: whether cases should remain stayed in light of the recent Federal Circuit rulings on key issues in the cases; what discovery issues exist; a proposed litigation plan; and suggested approaches to make efficient use of parties' legal and auditing resources. (J. Taylor, GC-31, 586-7530)

Fluor Hanford, Inc. v. United States (Fed. Cl.) is a suit in which the plaintiff seeks payment for costs incurred defending a qui tam False Claims Act lawsuit. The court granted the Government's motion for summary judgment, and limited the plaintiff's reimbursement of costs to the eighty percent level maintained by the Government. (T. West, GC-31, 586-5677)

FMC Corp. v. American Cyanamid (D.N.J.) is a CERCLA contribution action concerning the cleanup of a disposal site. This case is related to U.S. v. NCH Corp. (D.N.J.), a case in which FMC has filed a third party complaint against DOE and others seeking contribution pursuant to CERCLA. The parties have reached an agreement in principle to settle both cases. (J. Masters, GC-31, 586-3415)

FPL Seabrook, LLC v. United States (Fed. Cl.) is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. The court stayed the case pending a decision on the Government's motion to dismiss in Canal Electric Co. v. United States. (J. Taylor, GC-31, 586-7530)

General Atomics v. United States (Fed. Cl.). This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. The court has continued the stay of the case through December 15, 2008, at which time a status report is due. (J. Taylor, GC-31, 586-7530)

General Electric I v. United States (Fed. Cl.). The plaintiff filed a notice of voluntary dismissal without prejudice. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

General Electric II v. United States (Fed. Cl.). The plaintiff filed a notice of voluntary dismissal without prejudice. This an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

In re Hanford Nuclear Reservation Litigation (S. Ct.). The Supreme Court has extended the due date for plaintiffs' response to the defendants' petition for certiorari until November 10, 2009. This case involves the claims of the Hanford "downwinders" against former site contractors based on emissions of radioactive materials during plant operations in the 1940s and 1950s. The primary issue raised by the petition for certiorari is whether the Ninth Circuit erred in holding that, as a matter of law, the Government contractor defense is unavailable in actions brought under the Price-Anderson Act. (A. Fingeret, GC-31, 586-5678)

Hanford Environmental Health Foundation v. AdvanceMed Corp. (E.D. Wash.) is an action in which the incumbent contractor, a disappointed bidder for an occupational medical services contract at DOE's Hanford Site, seeks an injunction barring the selected firm from practicing medicine under the contract on the grounds that doing so would violate State licensing requirements. The action was originally filed in state court but was removed by the defendant to the United States District Court for the Eastern District of Washington, and the Government intervened. Following, the court's denial of both HEHF's motion to remand and motion for a temporary restraining order, the plaintiff filed a notice of voluntary dismissal of the action without prejudice. (T. West, GC-31, 586-5677)

Harris v. Bodman (D.C. Cir.). The plaintiff filed a notice of appeal from the district court's decision granting our motion to dismiss the case. This is a Title VII action in which the plaintiff alleges unlawful racial discrimination. (J. Schlaifer, GC-31, 586-8709)

Illinois Power Co. v. United States (Fed. Cl.). The court continued a stay in the case until December 5, 2008, at which time a status report is due. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Imperial Irrigation District v. DOE (9th Cir.). Imperial Irrigation District filed a petition of review for DOE's NIETC designation. (B. Mumme, GC-31, 586-8713)

Information Network for Responsible Mining v. DOE (D. Colo.). DOE filed its reply in support of its motion for an “Open America” stay. This is a FOIA action seeking the release of documents relating to DOE’s implementation of its uranium leasing program on federal public lands in Western Colorado. (S. Dove, GC-31, 586-0905)

Integrated Genomics, Inc. v. Kyrpides (N.D. Ill.). The Government denied the defendant’s request that it certify him as a federal employee within the scope of his employment at the time of the incidents set forth in the complaint. In this action, the plaintiff alleges that the defendant breached his employment contract with the plaintiff, breached his duty of loyalty to the plaintiff, wrongfully interfered with the plaintiff’s economic advantage, and engaged in unfair competition. The defendant has filed a third-party complaint seeking defense and indemnification from his current employer, the University of California, a DOE contractor. (M. Franklin, GC-31, 586-5982)

In International Self-Luminous Manufacturers Associates, Inc. v. DOE (D.D.C.), a challenge to DOE's pricing of tritium that it sells to commercial users, the plaintiff filed a response to our supplemental memorandum in support of our motion to dismiss or for summary judgment. (M. Madarang, GC-31, 586-6488)

Interstate Power & Light Co. v. United States (Fed. Cl.). The court has granted the parties’ motion to continue the stay in the case through January 7, 2009, at which time a joint status report is due. This is an action seeking damages for the Department’s delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Jacobs Engineering Group, Inc. v. United States (Fed. Cir.). The court denied the Government’s petition for panel rehearing of the decision reversing the decision of the Court of Federal Claims that granted summary judgment in favor of the Government. This is an action in which the plaintiff is seeking full reimbursement of its share of costs incurred under a contract terminated for convenience. (T. West, GC-32, 586-5677)

John v. United States (Fed. Cl.). The parties filed court-ordered post oral argument briefs concerning the Government’s motion to dismiss. This is a putative class action containing allegations similar to those in the People of Bikini case in which the plaintiffs, residents of Enewetak, seek compensation for an alleged unlawful taking of their lands, breach of implied contract, and failure to fully fund a monetary award pursuant to an order of the Nuclear Claims Tribunal. The amended complaint includes claims alleging that the Compact of Free Association agreements constitute Fifth Amendment takings, and, additionally, breaches of fiduciary duties. (A. Fingeret, GC-31, 586-5678 and A. Mitrani, GC-31, 586-5550)

Kansas Gas and Electric v. United States (Fed. Cl.). The court has continued a stay through November 20, 2008. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Keep Yellowstone Nuclear Free v. DOE (D. Idaho). The court denied the plaintiffs' motion to alter or amend the court's judgment granting DOE's motion for summary judgment and denying the plaintiffs' motion for summary judgment. This is a NEPA action alleging that DOE violated NEPA by undertaking the Advanced Test Reactor Life Extension Program at Idaho National Laboratory without preparing an Environmental Impact Statement, and seeking an injunction requiring DOE to cease operation of the ATR and to halt fuel shipments to the ATR until DOE complies with NEPA. (S. Dove, GC-31, 586-0905)

Keep Yellowstone Nuclear Free v. DOE (D. Wyo.). The court conducted an in-camera review of documents in DOE's possession. Earlier, the court issued an order on the parties' cross motions for summary judgment, in which it rejected DOE's withholding, under the "high-2" Exemption of the FOIA, of documents relating to nuclear reactor safety; held that DOE's interpretation of Exemption 7(F) to withhold the documents was too broad; and ordered that the withheld documents be made available to the court for in-camera production, and that DOE provide an expert to assist the court in determining if the withheld documents fall within a more narrow construction of Exemption 7(F) and whether there are details in the documents that can be redacted before the documents are produced. This is a FOIA action seeking the disclosure of documents relating to the safety of the Advanced Test Reactor at Idaho National Laboratory. (S. Dove, GC-31, 586-0905)

Lamb v. Natural Resources and Environmental Protection Cabinet and DOE (Franklin Cir. Ct. Ky.) is an action seeking judicial review of two agreed orders between the Commonwealth of Kentucky and DOE resolving alleged violations with respect to the generation and storage of hazardous wastes at the Paduach Gaseous Diffusion Plant. The Government filed a reply memorandum in support of its motion to dismiss. (M. Madarang, GC-31, 586-6488)

In Lasanska v. United States (N.D. Ill.), an action under the Federal Tort Claims Act in which plaintiff alleges injury by electrical shock due to the negligence of DOE and contractors overseeing the FERMI Laboratory, a complaint was filed. (T. West, GC-31, 586-5677)

Lennon v. Vandermeij (D.D.C.). A complaint was filed. This is an action by a former contractor employee alleging race discrimination. (J. Schlaifer, GC-31, 586-8709)

In Los Alamos Study Group v. Department of Energy (D.N.M.), a FOIA action in which the plaintiffs obtained an injunction requiring DOE to provide records in response to six FOIA requests submitted in April-July 1997 for various records held by and concerning the activities of the DOE contractor at the Los Alamos National Laboratory, the magistrate denied the plaintiffs' motion for leave to file an amended complaint. (M. Madarang, GC-31, 586-6488)

Maine Yankee v. United States (Fed. Cl.). The U.S. Court of Appeals for the Federal Circuit issued three separate opinions in the appeals of the three Yankee cases, the two Pacific Gas and Electric cases and Sacramento Municipal Utility District affirming-in-part, reversing-in-part and remanding those cases to their respective trial courts for further proceedings consistent with the Federal Circuit's decisions. The court remanded the cases back to the trial courts so that they can apply an acceptance rate before determining whether the Government's partial breach of contract was a substantial factor in causing the plaintiffs' damages. The Circuit Court went on to determine that the appropriate rate to use was the acceptance rate issued by the Department in the 1987 Acceptance Priority Ranking. The court also determined that the plaintiffs could recover costs for on-site storage of Greater-Than-Class-C (GTCC) waste, but that the Government is not necessarily liable for all GTCC disposal costs. The court also made case-specific rulings on issues such as set-offs of one-time fee payments and labor costs that will be applied by the lower courts. This is a suit for damages for alleged breach of contract as a result of DOE's failure to begin disposing of spent nuclear fuel. The trial court issued an opinion and order entering judgment in favor of the three plaintiff utilities for a total of approximately \$143 million in damages for the Department's breach of contract resulting from the delay in beginning to accept spent fuel for disposal. These cases, involving shut down reactors (one at each site) owned by Yankee Atomic, Maine Yankee, and Connecticut Yankee, were tried in August 2004. The opinion and order applies to all three cases. Individual damage amounts awarded to each utility are: Yankee Atomic--\$32,866,087; Connecticut Yankee--\$34,154,879; and Maine Yankee--\$75,774,554. Because the claims were for partial breach of contract, the damages are limited to actual mitigation costs incurred (for reracking and constructing ISFSIs) through 2001 for Yankee Atomic and Connecticut Yankee and through 2002 for Maine Yankee. The three utilities had sought \$428 million for mitigation and future damages. (J. Taylor, GC-31, 586-7530)

Maine Yankee v. United States II (Fed. Cl.). The court granted the Government's motion to stay all proceedings until 30 days after resolution of pending related appeals. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. This is the second case filed by the plaintiff seeking damages for the Department's delay. The first case, in which the plaintiff sought damages for the time period 1998 through December 2002, has been decided by the trial court and is on appeal to the Federal Circuit. This new complaint, filed in accordance with the Federal Circuit's instruction in its Indiana Michigan opinion directing utility plaintiffs to bring separate actions for damages as they are incurred, seeks damages for the time period January 1, 2003 through some unspecified date prior to trial. (J. Taylor, GC-31, 586-7530)

Manzanares v. Abraham (D.N.M.) is an action arising out of an alleged assault against the plaintiff by a DOE co-worker. The plaintiff filed a complaint against the Government and two DOE employees in their individual capacity. (T. West, GC-31, 586-5677)

McClain Museum, Inc. v. United States (S.D. Ind.) is an action alleging that the Government unlawfully seized property of the plaintiff without compensation. A tentative settlement agreement was reached. (T. West, GC-31, 586-5677)

Frank McKinnon and Concerned Citizens v. Spurgeon (D.N.M.). The court denied the plaintiffs' requests to remand the case to State Court and for an emergency injunction to stop the potential siting of GNEP Program facilities in Chaves County, New Mexico. (M. Kasischke, GC-31, 586-8334)

Mittal Steel USA ISG, Inc. v. Bodman (D.C. Cir.). The court of appeal denied the plaintiff's petition for rehearing. In this case, the plaintiff appealed the district court's entry of summary judgment in DOE's favor in the plaintiff's action challenging an OHA order denying the plaintiff's crude oil refund claim. (P. Michael, GC-31, 586-1303)

MNS Wind Company v. United States (Ct. Fed. Cl.). Oral argument was heard on the parties' cross-motions for summary judgment. This is a breach of contract action against the United States in which the plaintiff seeks \$270 million in damages for the termination by DOE of an agreement that would have resulted in the plaintiff constructing a windmill farm at the Nevada Test Site. (P. Michael, GC-31, 586-1303)

Monsanto Co. v. Abraham (S.D. Ohio) is an action in which a former M&O contractor at DOE's Mound facility seeks an order compelling the appointment of a contracting officer to whom that the plaintiff can submit claims for indemnification of litigation costs it has recently incurred as a result of its former work. The Government designated a contracting officer, thereby mooting the plaintiff's complaint. (T. West, GC-31, 586-5677)

National Wildlife Federation v. DOE (M.D. Pa.) and Piedmont Environmental Council v. DOE (M.D. Pa.). The Government filed reply briefs in support of the Government's motions to dismiss these consolidated cases for lack of subject matter jurisdiction. The plaintiffs have filed separate complaints for declaratory and injunctive relief challenging DOE's October 2007 Mid-Atlantic National Interest Electric Transmission Corridor ("NIETC") designation. In both actions, the plaintiffs raise claims under the Endangered Species Act, the National Environmental Policy Act, and the Energy Policy Act. In Piedmont, the plaintiffs also challenge as arbitrary and capricious DOE's finding that the designation of National Corridors is not an undertaking that has the potential to cause effects on historic properties and therefore does not require review under the National Historic Preservation Act. (B. Mumme, GC-31, 586-8713)

Natural Resources Defense Council v. DOE, (N.D. Cal.). The plaintiffs and the Government filed a stipulation and proposed order for an extension of time to file any motion concerning attorney's fees and costs. The court recently granted the plaintiffs summary judgment on their NEPA claims and reserved judgment on the plaintiffs' CERCLA and Endangered Species Act claims. This is an action for declaratory and injunctive relief in connection with the cleanup of radioactive and other contamination at Area IV (ETEC) of the Santa Susana Field Laboratory (SSFL) in Simi Valley, California. The court held DOE's Finding of No Significant Impact and decision to prepare an Environmental Assessment inadequate, and ordered DOE to prepare an Environmental Impact Statement. (T. West, GC-31, 586-5677)

Nebraska Public Power District v. United States (Fed. Cir.). Oral argument was held. In this case the Federal Circuit previously granted the plaintiff's petition to appeal the trial court's ruling that the D.C. Circuit's mandamus decision precluding the Government from asserting the unavoidable delays clause was void. This is an action seeking damages for DOE's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

The New Jersey Board of Public Utilities v. DOE (D.C. Cir.). The D.C. Circuit granted the Government's unopposed motion to transfer the New Jersey Board of Public Utilities' petition for review of DOE's NIETC designation to the Ninth Circuit Court of Appeals, where other appeals of DOE's order previously were transferred pursuant to the random selection process of the Judicial Panel on Multidistrict Litigation. (B. Mumme, GC-31, 586-8713)

New Jersey Department of Environmental Protection v. Higgins Disposal (D.N.J.). This is an action brought by the State of New Jersey for reimbursement of clean-up and removal costs for a landfill. We filed an answer to FMC's third party complaint against DOE. This case has been consolidated with FMC Corp. v. American Cyanamid (D.N.J.), a CERCLA contribution action in which DOE is also a third party defendant. (J. Masters, GC-31, 586-3415)

Niagara Mohawk, New York State Electric v. United States (Fed. Cl.) is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. The Government filed its reply to the plaintiff's response to the Government's notice of directly related case and motion to transfer and consolidate. (J. Taylor, GC-31, 586-7530)

Niagara Mohawk Power v. United States (Fed. Cl.). The parties filed a joint status report and the court issued an order staying the case through December 8, 2008, at which time a status report is due. This is an action seeking damages for DOE's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Northern States Power I v. United States (Fed. Cir.). The Federal Circuit granted the Government's request to stay briefing pending resolution of related appeals pending in the Federal Circuit. The trial court awarded Minnesota nuclear utility plaintiff, Northern States Power, damages totaling approximately \$116,485,000 for partial breach of contract through December 31, 2004. The plaintiff had sought \$172,154,000 in mitigation costs for two reactors located at its Prairie Island nuclear power plant and one reactor at its Monticello nuclear plant due to the Department's delay in beginning to accept spent nuclear fuel. This is a breach of contract action seeking damages for DOE's failure to begin disposing of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Northern States Power Co. II v. United States (Fed. Cl.). The court granted the Government's motion to stay all proceedings pending resolution of the numerous appeals in similar spent fuel actions in the Federal Circuit. This is the second case filed by the plaintiff seeking damages for the Department's delay in beginning to accept spent nuclear fuel. The first case, in which plaintiffs sought damages for the time period 1998 through December 2004, has been tried and has been submitted to the trial judge for decision. The second complaint, filed in accordance with the Federal Circuit's instruction in its Indiana Michigan opinion which directs utility plaintiffs to bring separate actions for damages as they are incurred, seeks damages for the time period January 1, 2005 through June 30, 2007. (J. Taylor, GC-31, 586-7530)

NRDC v. Bodman (S.D. N.Y.). An environmental interest group and two other entities purporting to represent consumer and low income tenant interests filed a complaint alleging that DOE has failed to meet statutory deadlines for issuing energy efficiency standards under the Energy Policy and Conservation Act (EPCA). The complaint seeks a declaratory judgment that DOE has violated EPCA's deadlines and an injunction compelling DOE to undertake rulemakings according to a timetable to be imposed by the court. A companion case, seeking identical relief on behalf of these nonprofit organizers claiming to represent environmental consumer and low-income consumer interests has been filed in the same court. (D. Hughes, GC-31, 586-0258)

Osarczuk v. Associated Universities, Inc. (N.Y. Sup. Ct. Suffolk County). AUI's opposition to the plaintiffs' motion for class certification was filed. Earlier, the Appellate Division of the New York Supreme Court affirmed the trial court's dismissal of the plaintiffs' claims arising from exposure to nuclear material; reversed the dismissal of the plaintiffs' claims arising from exposure to non-nuclear, hazardous materials as premature; and remanded the case to the trial court for a determination of the plaintiffs' motion for class certification. In this action the plaintiffs allege economic loss, personal injury and other damages as a result of Brookhaven National Laboratory's release of hazardous substances into the soil and groundwater near the plaintiffs' properties. (S. Dove, GC-31, 586-0905)

Pacific Gas and Electric I & II v. United States (Fed. Cir.). The U.S. Court of Appeals for the Federal Circuit issued three separate opinions in the appeals of the three Yankee cases, the two Pacific Gas and Electric cases and Sacramento Municipal Utility District affirming-in-part, reversing-in-part and remanding those cases to their respective trial courts for further proceedings consistent with the Federal Circuit's decisions. The court remanded the cases back to the trial courts so that they can apply an acceptance rate before determining whether the Government's partial breach of contract was a substantial factor in causing the plaintiffs' damages. The Circuit Court went on to determine that the appropriate rate to use was the acceptance rate issued by the Department in the 1987 Acceptance Priority Ranking. The court also determined that the plaintiffs could recover costs for on-site storage of Greater-Than-Class-C (GTCC) waste, but that the Government is not necessarily liable for all GTCC disposal costs. The court also made case-specific rulings on issues such as set-offs of one-time fee payments and labor costs that will be applied by the lower courts. Following consolidated trials of the plaintiffs' breach of contract claims arising from the delay in beginning to accept the plaintiffs' spent fuel for disposal, the trial court awarded the plaintiffs \$42,765,453 in damages. In this case, the court found that the Department would have started accepting spent nuclear fuel at a rate of 900 metric tons uranium (MTUs) annually, and that Greater-than-Class-C (GTCC) waste is not covered under the standard contract. These findings are contrary to another trial court's recent holdings in Yankee Atomic that the Department would begin accepting spent nuclear fuel at a 3000 MTU annual rate, and that GTCC waste was covered by the standard contract. (J. Taylor, GC-31, 586-7530)

Pajarito Plateau Homesteaders, Inc. v. United States (D.N.M.) are actions in which the plaintiffs seek restoration of their former property rights based on claims that the Government improperly prosecuted condemnation actions that were filed in the 1943-44 time period to acquire property for the Los Alamos National Laboratory. The court granted the plaintiffs' motion for a stay, based on a representation that legislation now pending in Congress, if enacted, would resolve their claims. (P. Michael, GC-31, 586-1303)

Pajarito Plateau Homesteaders, Inc. v. United States (D.N.M.) is an action on behalf of Los Alamos area landowners whose property was taken for use by the Manhattan Engineering District in 1943-44, seeking relief resolving the plaintiffs' claims for restoration of their property rights and setting aside the orders and judgments entered in earlier condemnation proceedings. The court recently granted the motion of the plaintiffs' counsel to withdraw from the case. However, one of these counsel has now reentered the case on behalf of two of the named plaintiffs and filed a motion to certify the case as a class action. (P. Michael, GC-31, 586-1303)

Pennsylvania Public Utility Commission v. DOE, National Wildlife Federation, et al. v. DOE, and Piedmont Environmental Council, et al. v. DOE (3rd Cir.). The National Wildlife Federation and Piedmont Environmental Council filed notices of appeal from the district court's order dismissing these consolidated cases for lack of subject matter jurisdiction. The Pennsylvania Public Utility Commission previously filed a notice of appeal concerning the same district court decision. The plaintiffs had filed complaints seeking declaratory and injunctive relief challenging DOE's October 5, 2007 Mid-Atlantic National Interest Electric Transmission Corridor ("NIETC") designation as being in violation of Section 216 of the Federal Power Act, the Administrative Procedure Act, environmental laws, and the National Historic Preservation Act. (B. Mumme, GC-31, 586-8713)

The People of Bikini v. United States (Fed. Cir.) and John v. United States (Fed. Cir.). The parties presented oral argument on the plaintiffs' appeals. These are companion cases which raise claims addressing the legal responsibility of the United States for the post-World War II testing of nuclear explosives on Bikini and Enewetak Islands in the Marshall Island group. The trial court found that it lacked subject matter jurisdiction. Its rulings were based on the statute of limitations, as well as the doctrines of collateral estoppel, affirmative withdrawal of the court's jurisdiction, and the presence of a political question. (A. Fingeret, GC-31, 586-5678 and A. Mitrani, GC-31, 586-5550)

The People of California v. DOE (9th Cir.). The petitioners' reply briefs were filed. In this case, the State of California, the Sierra Club, and the Natural Resources Defense Council have petitioned the Ninth Circuit Court of Appeals for review of DOE's establishment of energy conservation standards applicable to electrical distribution transformers. DOE had published those standards at 72 Fed. Reg. 58,190 (October 12, 2007). (D. Hughes, GC-31, 586-0258)

People of the State of New York and the Public Service Commission of the State of New York v. DOE (2d Cir.). The court granted the Government's unopposed motion to transfer this petition for review of DOE's NIETC designation to the Ninth Circuit Court of Appeals, where other appeals of DOE's order previously were transferred pursuant to the random selection process of the Judicial Panel on Multidistrict Litigation. (B. Mumme, GC-31, 586-8713)

Piedmont Environmental Council v. DOE (9th Cir.). PEC filed a petition for review of DOE's NIETC designation. (B. Mumme, GC-31, 586-8713)

Piedmont Environmental Council v. DOE (M.D. Pa.). This case has been consolidated with Pennsylvania Public Utility Commission v. DOE and National Wildlife Federation v. DOE. The plaintiffs have filed a complaint for declaratory and injunctive relief challenging DOE's October 2007 Mid-Atlantic National Interest Electric Transmission Corridor ("NIETC") designation. As in the recently filed National Wildlife Federation v. DOE (M.D. Pa.) action, the plaintiffs raise claims under the Endangered Species Act, the National Environmental Policy Act, and the Energy Policy Act. In this action, the plaintiffs also challenge as arbitrary and capricious DOE's finding that the designation of National Corridors is not an undertaking that has the potential to cause effects on historic properties and therefore does not require review under the National Historic Preservation Act. (B. Mumme, GC-31, 586-8713)

PMTech v. United States (Fed. Cl.). The Government filed a motion to dismiss. The bridge sole source contract which is the subject of this lawsuit is no longer in place and the plaintiff's request for a permanent injunction is now moot. However, having denied the plaintiff's request for a preliminary injunction, the court has not yet ruled on the plaintiff's request for bid preparation and proposal costs. This is a pre-award bid protest action against what the plaintiff terms a planned sole source award by DOE to an existing contractor. PMTech sought an injunction preventing DOE from extending the existing contract. (A. Mitrani, GC-31, 586-5550)

Portland General Electric v. U.S. (Fed.Cl.). This is a suit for damages based on DOE's failure to begin disposal of spent fuel. The court has stayed the case through December 15, 2008, at which time a status report is due. (J. Taylor, GC-31, 586-7530)

Power Authority of the State of New York v. U.S. (Fed. Cl.). The court issued an order directing the parties to agree upon a discovery schedule. This is a suit for damages based on DOE's failure to begin disposal of spent fuel. (J. Taylor, GC-31, 586-7530)

PPL Susquehanna, LLC v. United States (Fed. Cl.). The parties filed a status report. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

PSEG Nuclear L.L.C. v. U.S. (Fed. Cl.). The court issued a scheduling order providing that discovery concludes April 4, 2009, and a pretrial conference will be held July 1, 2009, at which time a trial date will be set. In this case PSEG sued for partial breach of contract based on the delay in accepting its spent nuclear fuel for disposal. (J. Taylor, GC 31, 586-7530)

Public Citizen v. Bolten (D. D.C.). The court granted the Government's motion for summary judgment, and denied the plaintiff's motion for summary judgment. In this action, the plaintiff alleges that DOE and other agencies have failed to make available to the public indexes and descriptions of their major information systems, in violation of the Freedom of Information Act; and have failed to maintain a current and complete inventory of their information systems, in violation of the Paperwork Reduction Act. (S. Dove, GC-31, 586-0905)

Public Utilities Commission of California v. DOE (9th Cir.). The California PUC filed a petition for review of DOE's NIETC designation. (B. Mumme, GC-31, 586-8713)

Responsible Environmental Solutions Alliance v. DOE (S.D. Ohio) is a CERCLA contribution action. The court approved the consent decree filed jointly by the parties and dismissed the case. (M. Madarang, GC-31, 586-6488)

Rochester Gas and Electric v. U.S. (Fed. Cl.). This is an action seeking damages for DOE's delay in beginning to dispose of spent nuclear fuel. The court has granted the parties' motion to stay the case through December 15, 2008, at which time a joint status report is due. (J. Taylor, GC-31, 586-7530)

Rockwell Automation Corp. v. United States (Fed. Cl.) is a case brought by Rockwell claiming that its Rocky Flats award fees were improperly reduced. The Government filed a second amended answer to the complaint. (M. Madarang, GC-31, 586-6488)

Rockwell International Corp. v. United States ex rel. James S. Stone (S. Ct.). The Supreme Court ruled 6-2 that James Stone, the relator, is not the "original source" of the information that formed the basis for the claims alleged against Rockwell in a suit filed under the False Claims Act since the jury's finding against Rockwell was not based on the information Mr. Stone provided. Mr. Stone therefore will not share in the award granted to the government by the lower federal courts. The Supreme Court declined to consider Rockwell's broader argument that the False Claims Act is unconstitutional. This is a *qui tam* False Claims Act action alleging that Rockwell defrauded the United States by misrepresenting its environmental, safety, and health performance at Rocky Flats, in which the Tenth Circuit affirmed the trial court's judgment against Rockwell on a minority of the claims advanced by the Government and the relator, and in favor of Rockwell on a majority of claims. (M. Madarang, GC-31, 586-6488)

Sacramento Municipal Utility District v. U.S. (Fed. Cir.). The U.S. Court of Appeals for the Federal Circuit issued three separate opinions in the appeals of the three Yankee cases, the two Pacific Gas and Electric cases and Sacramento Municipal Utility District affirming-in-part, reversing-in-part and remanding those cases to their respective trial courts for further proceedings consistent with the Federal Circuit's decisions. The court remanded the cases back to the trial courts so that they can apply an acceptance rate before determining whether the Government's partial breach of contract was a substantial factor in causing the plaintiffs' damages. The Circuit Court went on to determine that the appropriate rate to use was the acceptance rate issued by the Department in the 1987 Acceptance Priority Ranking. The court also determined that the plaintiffs could recover costs for on-site storage of Greater-Than-Class-C (GTCC) waste, but that the Government is not necessarily liable for all GTCC disposal costs. The court also made case-specific rulings on issues such as set-offs of one-time fee payments and labor costs that will be applied by the lower courts. The trial court entered a final judgment awarding the plaintiff \$39,796,234 in damages incurred due to the Department's delay in accepting spent fuel at its Rancho Seco reactor for the time period May 15, 1997, through December 31, 2003. The plaintiff had sought damages in the amount of \$78,558,212. The court had further denied the plaintiff's motion for reconsideration of the court's earlier ruling that, because it was not foreseeable at the time the parties entered into the contract, the Government was not liable for plaintiff's costs related to its purchase of a dual-purpose cask dry storage system. (J. Taylor, GC-31, 586-7530)

Sancho v. DOE (9th Cir.). The plaintiffs filed a notice of appeal of the district court's decision in the Government's favor. The district court's decision had granted the Government's motion to dismiss for lack of subject matter jurisdiction, on the ground that the Government's involvement with the Large Hadron Collider (LHC) does not qualify as a "major federal action" within the meaning of NEPA. This is a NEPA lawsuit alleging that DOE, Fermilab, CERN (the European Organization for Nuclear Research), and the National Science Foundation violated NEPA by preparing the LHC in Switzerland for operation without preparing an Environmental Assessment or an Environmental Impact Statement, and seeking a temporary restraining order and injunction barring the defendants from operating the LHC, or further preparing it for operation, until they comply with NEPA and until the LHC can be proven to be reasonably safe within industry standards. (S. Dove, GC-31, 586-0905)

Save Strawberry Canyon v. Lawrence Berkeley National Laboratory (N.D. Cal.). The court has granted the defendants' joint request for an extension of time to respond to the complaint through December 1, 2008. This is an action by a local citizen's group asserting that the Laboratory and DOE failed to comply with the environmental review requirements of the National Environmental Policy Act (NEPA) in connection with the Laboratory's proposed Computational Research and Theory Facility Project. (M. Franklin, GC-31, 586-5982 and J. Masters, GC-31, 586-3415)

The Sierra Club v. DOE (9th Cir.). A settlement assessment conference is set for March 5, 2008. In this case, the Sierra Club petitioned the Ninth Circuit Court of Appeals for review of DOE's establishment of energy conservation standards applicable to electrical distribution transformers. DOE had published that those standards at 72 Fed. Reg. 58,190 (October 12, 2007). (D. Hughes, GC-31, 586-0258)

Smelser v. United States (Fed. Cl.) is an action in which the plaintiff alleges that DOE breached a settlement agreement entered into to resolve previous disputes. The parties reached a tentative settlement under which all claims will be dismissed. (T. West, GC-31, 586-5677)

Smith v. Carbide and Chemicals (W.D. Ky.). The court issued a further scheduling order establishing pretrial deadlines and re-setting trial to begin August 10, 2009. The action was brought against present and past contractors at the Paducah Gaseous Diffusion Plant by persons residing or owning property in an area adjacent to the plant who alleged decreased property values and personal injury resulting from the release of toxic and hazardous substances. Finding genuine issues of material fact remaining, the court of appeals previously reversed the district court's judgment granting the defendants' motion for summary judgment, and remanded the matter for trial. (A. Fingeret, GC-31, 586-5678)

In Sousa v. U.S. Department of Energy, Lawrence Livermore National Laboratory, California Bd. of Regents, Richard Berta and Does 1-10 (N.D. Cal.), an action alleging both common law and constitutional torts, including false and malicious prosecution, false arrest, unlawful search and seizure, deprivation of due process and equal protection of the law, conspiracy, negligence, and intentional and negligent infliction of emotional distress, a complaint was filed. (T. West, GC-31, 586-5677)

Southern California Edison v. United States (Fed. Cl.) The parties filed a joint status report regarding further proceedings in the case. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Southern Operating Co., Alabama Power Co., Georgia Power Company v. United States (Fed. Cir.). The Federal Circuit granted the Government's request to stay briefing pending resolution of appeals in similar cases recently argued before the court. The trial court awarded the plaintiffs damages totaling approximately \$77 million for partial breach of contract resulting from the Government's delay in beginning to accept spent nuclear fuel for disposal. (J. Taylor, GC-31, 586-7530)

Stark v. Honeywell International, Inc. (W.D. Mo.). The parties filed a joint stipulation of dismissal with prejudice after reaching a settlement of the case. This is a tort action against the current and former contractors at DOE's Kansas City Plant in which the wife of a beryllium worker alleges personal injuries as a result of the exposure to beryllium-containing particles that her husband carried to their home on his person and work clothes. (S. Dove, GC-31, 586-0905)

State of Missouri v. Westinghouse Electric (E.D. Mo.). Several private defendants filed a motion to intervene, seeking to set aside a consent decree between the State and Westinghouse. This is a CERCLA cost recovery and state law action concerning cleanup of a metal and uranium manufacturing site which is related to Westinghouse Electric Co. v. DOE (E.D. Mo.), a CERCLA contribution action against DOE and several private corporations. (J. Masters, GC-31, 586-3415)

State of Nevada v. EPA (D.C. Cir.). The State of Nevada filed a petition for review of the EPA's rule establishing radiation protection standards for Yucca Mountain. (J. Taylor, GC-31, 586-7530)

State of New Mexico v. DOE (D.N.M.) is an action in which the State of New Mexico is seeking damages under CERCLA for remediation of a Superfund site. The court previously had granted dismissal of the federal defendants from the case, leaving only natural resources damage claims against private defendants. The court entered a pretrial order limiting the State's potential damage claims. The court set a final pretrial conference for May 11, 2004. (T. West, GC-31, 586-5677)

State of New York v. Bodman and NRDC v. Bodman (S.D. N.Y.). DOE's report on the status of rulemaking activities covered by the parties' consent decree was submitted to the court. (D. Hughes, GC-31, 586-0258)

State of New York v. DOE (W.D.N.Y.). The parties filed a joint status report advising the court that mediation is ongoing. The court previously approved the parties' joint motion providing for a six month stay of the litigation to allow the parties to attempt to resolve the plaintiffs' West Valley Demonstration Project Act (WVDPA) and CERCLA claims through mediation. This case involves a dispute between DOE and the State of New York concerning their respective obligations for cleanup and waste disposal at West Valley. (J. Masters, GC-31, 586-3415)

State of New York, Natural Resources Defense Council v. DOE (2nd Cir.). The Government's brief was filed. In addition, the intervenor, Air Conditioning, Heating and Refrigeration Institute, filed a brief in support of the Government's position that the petitions for review be denied. In this matter, petitioners (the State of New York and the Natural Resources Defense Council), along with other states and other non-governmental organizations, have separately petitioned the Second Circuit Court of Appeals for review of DOE's rule establishing energy conservation standards for residential furnaces and boilers. DOE had published those standards at 72 Fed. Reg. 65,136 (November 19, 2007). Reply briefs are due on July 31, 2008. (D. Hughes, GC-31, 586-0258)

State of Washington v. DOE (9th Cir.). Oral argument was held on the Government's appeal. This case involves the issue of whether the WIPP Land Withdrawal Act, as amended, exempts transuranic mixed waste designated by DOE for disposal at WIPP from the land disposal restrictions of the Resource Conservation and Recovery Act and the corresponding provisions of the State of Washington's Hazardous Waste Management Act. The district court concluded that the LDR exemption only applies to wastes that are actually at WIPP, not to wastes that are designated to go there, and we have appealed that decision to the Ninth Circuit Court of Appeals. (M. Kasischke, GC-31, 586-8334)

Stepp v. Monsanto Research Corp. (S.D. Ohio). The court issued its decision sustaining in part, and denying in part, the defendants' motion for partial summary judgment as to liability for emissions of radionuclides in 1961. The court also overruled in part the defendants' motion to decertify the class. Additionally, the court dismissed EG&G as a defendant with reference to the claims arising out of the release of radioactivity in 1961. The court dismissed the claims of four named plaintiffs. This is a class action lawsuit filed on behalf of property owners and/or residents of Montgomery County, Ohio, against former M&O contractors at DOE's Mound Facility which seeks compensatory damages, punitive damages, medical monitoring and response costs under CERCLA for alleged radioactive and toxic emissions. In the court's opinion defining its prior ruling granting in part and denying in part the defendants' motion for summary judgment, it dismissed the plaintiffs' claims concerning airborne emissions of radionuclides except for those occurring in 1961. Trial, if necessary, has been scheduled to begin on February 1, 2009. (A. Fingeret, GC-31, 586-5678)

In Re Stone & Webster, Inc. (Bankr. D. Del.) is a recently filed Chapter 11 Bankruptcy proceeding. The debtor had a number of DOE contracts, and is part of a consortium formed to provide MOX fuel fabrication and reactor irradiation services in connection with agreements between the United States and Russian Federation concerning the management and disposition of plutonium designated as no longer required for defense purposes. The bilateral plutonium disposition agreement calls for the design of the MOX fuel fabrication facility to be completed by March 2002, construction to be completed by April 2006, and full scale facility operation to commence by March 2007. In addition to its participation in the MOX fuel project consortium, Stone & Webster is providing engineering design services as a subcontractor to the consortium. An auction of the debtor's assets was concluded on July 7, 2000, and The Shaw Group was the high bidder. A hearing on the Government's objections to the sale has been postponed while the parties attempt to resolve the objections. (J. Masters, GC-31, 586-3415)

Sussman v. Brookhaven Science Assoc., LLC. (E.D.N.Y.). The plaintiff and the defendant contractor reached a settlement agreement in principle. The plaintiff alleges that the defendant contractor, various of its employees, and DOE subjected him to discrimination based on age, disability and reprisal as well as to intentional and negligent infliction of emotional distress. He further alleges that the defendants violated the Privacy Act by disclosing his medical information to others without his permission. (M. Franklin, GC-31, 586-5982)

Syms v. Olin Corp. (W.D.N.Y.) is a tort and CERCLA action against several Government agencies and a private corporation seeking reimbursement for cleanup of a Superfund site that was formerly owned by the AEC. The Government filed responses to the plaintiffs' first set of discovery requests. (J. Masters, GC-31, 586-3415)

System Fuels Inc. v. United States (Fed. Cir.). The Federal Circuit granted the Government's request to a stay briefing pending resolution of the appeals in the Yankee, Sacramento Municipal and Pacific Gas cases that were recently argued before the Federal Circuit. The trial court previously awarded the plaintiffs \$48,651,728 for partial breach of contract damages for the time period January 31, 1998, through June 30, 2006, at the two-reactor unit Arkansas Nuclear One in Russellville, Arkansas. The plaintiffs had sought \$53,773,765 in damages. This is an action in which the plaintiff seeks damages on its own behalf and as an agent for Entergy Arkansas for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

System Fuels Inc. v. United States (Fed. Cl.). The court has continued a stay of the case through January 7, 2008, at which time a joint status report is due. This is an action on the plaintiff's own behalf and as an agent for Entergy Louisiana seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

System Fuels Inc. v. United States (Fed. Cl.). The court issued an opinion and order awarding System Fuels, Inc., on its own behalf, and as an agent for Middle South Energy, Inc. and South Mississippi Electric Power Association, mitigation damages of \$10,014,114 for the Department's partial breach of contract for the period January 15, 1998 to August 31, 2005. The plaintiffs sought damages of \$12,178,000 for construction costs of their dry storage facility at the Grand Gulf Nuclear Station located near Vicksburg, MS. The court requested additional expert testimony on the cost of borrowed funds and will enter a final order and damages award in this case after obtaining that information. (J. Taylor, GC-31, 586-7530)

In Tarzia v. Brookhaven National Laboratory (N.Y. Sup. Ct., Suffolk Co.), an action against Associated Universities, Inc. and several business entities alleging economic loss, personal injury and other damages as a result of the release of hazardous materials from Brookhaven, AUI filed a reply in support of its appeal from the order denying its motion to dismiss the plaintiffs' claim for negligent misrepresentation. (S. Dove, GC-31, 586-0905)

Texas Genco, LP v. United States (Fed. Cl.). The court has lifted the stay in this case and directed the parties to submit a proposed discovery plan by October 30, 2008. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Tolbert-Smith v. Bodman (D.D.C.). The plaintiff submitted a proposed settlement agreement. This is an action under the Rehabilitation Act, Title VII, and the Privacy Act alleging that DOE failed to accommodate the plaintiff's disability, engaged in reprisal for the plaintiff's prior EEO activity, and unlawfully disclosed confidential information related to the plaintiff's request for reasonable accommodation. (J. Schlaifer, GC-31, 586-8709)

Toll Brothers, Inc. v. DOE (D.C. Cir.). The court granted the Government's unopposed motion to transfer Toll Brothers' petition for review of DOE's NIETC designation to the Ninth Circuit. (B. Mumme, GC-31, 586-8713)

Tri-Valley CAREs v. DOE (N.D. Cal.). The court denied the plaintiff's second motion seeking to file a supplemental brief in support of their motion for a preliminary injunction. This is an action by an environmental group and private citizens alleging that DOE has violated NEPA by failing to prepare an EIS for a Biosafety Level 3 facility at Lawrence Livermore National Laboratory. (J. Masters, GC-31, 586-3415)

In Trujillo v. University of California (First Judicial Dist. Ct., County of Rio Arriba, N.M.), an action alleging that in implementing a Reduction-In-Force at Los Alamos, the University of California breached an implied contract of employment and implied covenant of good faith and fair dealing with the plaintiffs and violated certain provisions of the Administrative Manual and California Information Practices Act, the plaintiffs filed a memorandum in opposition to the defendant's motion for a new trial on plaintiff Atwater's claim. The defendant filed a reply in support of its motion for a new trial on plaintiff Atwater's claim and objections to plaintiff Atwater's cost bill. (M. Madarang, GC-31, 586-6488)

TXU Generation Co. v. United States (Fed. Cl.) is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. The court has granted the joint motion to stay the case through February 2, 2009, at which time a joint status report is due. (J. Taylor, GC-31, 586-7530)

Union Electric Co. v. United States (Fed. Cl.). The parties filed a joint status report requesting that the case remain stayed through February 1, 2009. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

United States v. Eurodif (S. Ct.). The court heard oral arguments. In this case the United States Court of Appeals for the Federal Circuit rejected the Department of Commerce's conclusion that low-enriched uranium imported pursuant to separative work unit ("SWU") transactions is subject to the anti-dumping duty statute. DOE joined with Commerce and the Departments of State and Defense in seeking certiorari. The United States' petition asserted that, if left undisturbed, the Federal Circuit decision will threaten U.S. foreign policy and national security interests by undermining the United States' Highly Enriched Uranium Agreement with the Russian Federation, severely compromise the ongoing economic viability of USEC, the only domestic entity that enriches uranium, and increase the United States' dependence on foreign energy resources. (M. Johnston, GC-30, 586-8700)

United States v. Manning (9th Cir.). The State determined not to pursue Supreme Court review of the Ninth Circuit's decision in our favor. The court of appeals previously affirmed the district court's grant of summary judgment to the United States, Fluor, and TRIDEC, in their challenge to constitutionality of Washington State Initiative I-297 (the Cleanup Priority Act or CPA). The CPA was designed to prevent the shipment of mixed radioactive and hazardous waste to the Hanford Nuclear Reservation until waste already on-site has been cleaned up and stored, treated, and disposed of in compliance with its terms. The Ninth Circuit held that the CPA is preempted because (1) it regulates in a field occupied by the Atomic Energy Act, and (2) the CPA directly and substantially impacts DOE's decisions on the nationwide management of nuclear waste. (M. Kasischke, GC-31, 586-8334)

United States v. Nevada (9th Cir.). A settlement assessment conference is set for March 5, 2008. Finding that DOE failed to show irreparable harm, the district court denied DOE's motion for a preliminary injunction against the Nevada State Engineer's order that we cease and desist from pumping water to use for phase 2 bore hole drilling. This is a case in which we are seeking declaratory and injunctive relief seeking to reverse the State Engineer's rulings denying DOE's applications for 430 acre-feet of water per year for use at Yucca Mountain. The district court earlier had stayed proceedings in this case with the proviso that Nevada accommodate all reasonable and appropriate needs of the United States regarding interim access to water. (J. Taylor, GC-31, 586-7530 and B. Mumme, GC-31, 586-8713)

United States DOE v. B&O R.R. and United States DOE v. Aberdeen & Rockfish R.R. (DOT) The Surface Transportation Board approved our proposed settlement agreement with Union Pacific, resolving a longstanding dispute. This is a ratemaking proceeding involving overcharges on past shipments of spent nuclear fuel. (J. Schlaifer, GC-31, 586-8709)

United States ex rel. Natural Resources Defense Council v. Lockheed Martin (W.D. Ky.) is a qui tam action under the False Claims Act alleging that Lockheed made false statements about its performance in the areas of health, safety and environmental protection to induce the Government to pay excessive award fees and costs under its contracts to operate the Paducah Gaseous Diffusion Plant. The parties filed a joint motion for an agreed protective order regarding the Privacy Act. (M. Madarang, GC-31, 586-6488)

United States ex rel. James S. Stone v. Rockwell International Corp. (10th Cir.) is a qui tam False Claims Act action alleging that Rockwell defrauded the United States by misrepresenting its environmental, safety, and health performance at Rocky Flats in which the jury returned a verdict against Rockwell on a minority of the claims advanced by the Government and the relator, and in favor of Rockwell on a majority of claims. The court of appeals denied Rockwell's request to stay issuance of the mandate concerning the court's affirmance of the trial court's decision pending Rockwell seeking Supreme Court review. (M. Madarang, GC-31, 586-6488)

United States of America ex rel. Aaron J. Westrick v. Second Chance Body Armor and Toyobo Co., Ltd. (D. D.C.) is a qui tam False Claims Act action in which relator alleges that contractors knowingly sold defective body armor to numerous federal agencies, including DOE. The United States intervened in this action and filed its own complaint. (D. Hughes, GC-31, 586-0258)

U.S. v. NCH Corp. (D.N.J.) is a CERCLA enforcement action concerning the cleanup of a landfill site in which one of the defendants, FMC Corporation, has filed a third party complaint against DOE and others seeking contribution pursuant to CERCLA. Formal mediation has been extended until May 15, 2004. (J. Masters, GC-31, 586-3415)

U.S. v. Union Pacific Railroad Company (W.D. Okla.). Pursuant to the court's scheduling order, motions to join additional parties and/or amend pleadings are due February 27, 2009, and discovery shall be completed by September 14, 2009. Trial is tentatively set for January 2010. In the meantime, settlement discussions are ongoing. Union Pacific filed an amended answer and counterclaim for contribution against DOE and other Federal and private entities. This is a CERCLA enforcement action regarding an oil refining facility in Oklahoma City, Oklahoma. DOE's contractors at Pantex and NIPER (Bartlesville, OK) sites sent waste oil to the site in the mid-1980's. (J. Masters, GC-31, 586-3415)

Vermont Yankee Nuclear Power Corp. v. United States (Fed. Cl.). The court denied the Government's motion to coordinate discovery and develop a litigation plan for the numerous pending spent nuclear fuel cases. The court found the motion moot because discovery had previously commenced and a motion for partial summary judgment regarding ownership of the damage claims remains pending. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Westinghouse Electric Co. v. U.S. (E.D. Mo.). The parties filed a joint statement summarizing the procedural and substantive posture of the case. A status conference is set for October 23, 2008. The plaintiff's sole remaining claim is one for CERCLA §107 cost recovery. This is a CERCLA contribution action against DOE and several private corporations concerning cleanup of a metal and uranium manufacturing site. One of the private defendants, United Nuclear Corp., has filed a cross-claim against DOE. (J. Masters, GC-31, 586-3415)

Westinghouse Electric Company v. United States (W.D. Pa. and Fed. Cl.) is an action in which the plaintiff is seeking a declaratory judgment that the Government is liable for the costs related to cleaning up contamination at Blairsville, Pennsylvania where the AEC and its successor agencies allegedly carried out uranium fuel operations for nuclear powered submarines. The plaintiff asserts that the Government is liable both under CERCLA and by virtue of contracts the plaintiff had with the AEC. The CERCLA portion of the case was transferred to the district court. The contract portion of the case remains in the Court of Federal Claims. The district court denied the Government's motion for summary judgment concerning the CERCLA claims. (T. West, GC-31, 586-5677)

The Wilderness Society v. DOE (9th Cir.). The court previously consolidated this case with the twelve other petitions for review of DOE's National Interest Electric Transmission Corridor designation pending in that circuit. The Ninth Circuit Court of Appeals has set a briefing schedule under which the petitioners' opening brief is due December 29, 2008, and the Government's answering brief is due March 19, 2009. (B. Mumme, GC-31, 586-8713)

Williams v. Bodman (D.D.C.). We filed a reply in support of our motion to dismiss the complaint. This is an action under Title VII, the Equal Pay Act, and the ADEA, alleging that the plaintiff was discriminated against on the basis of race, gender and age. (J. Schlaifer, GC-31, 586-8709)

Winnemucca Indian Colony v. U.S. (D. Nev.). The Government's post-hearing reply brief was filed. This is an action against DOE and DOD brought by two Indian Tribes and individual "downwinders" challenging on NEPA and other grounds the planned "Divine Strake" above ground detonation of high explosives at the Nevada Test Site. (J. Masters, GC-31, 586-3415)

Wisconsin Electric Power Co. v. United States (Fed. Cl.). Oral argument was held. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Wisconsin Public Service Corp. v. United States (Fed. Cl.). The court has stayed the case through December 15, 2008, at which time a status report is due. This is an action seeking damages for the Department's delay in beginning to dispose of spent nuclear fuel. (J. Taylor, GC-31, 586-7530)

Yankee Atomic Electric Company v. United States (Fed. Cir.). The U.S. Court of Appeals for the Federal Circuit issued three separate opinions in the appeals of the three Yankee cases, the two Pacific Gas and Electric cases and Sacramento Municipal Utility District affirming-in-part, reversing-in-part and remanding those cases to their respective trial courts for further proceedings consistent with the Federal Circuit's decisions. The court remanded the cases back to the trial courts so that they can apply an acceptance rate before determining whether the Government's partial breach of contract was a substantial factor in causing the plaintiffs' damages. The Circuit Court went on to determine that the appropriate rate to use was the acceptance rate issued by the Department in the 1987 Acceptance Priority Ranking. The court also determined that the plaintiffs could recover costs for on-site storage of Greater-Than-Class-C (GTCC) waste, but that the Government is not necessarily liable for all GTCC disposal costs. The court also made case-specific rulings on issues such as set-offs of one-time fee payments and labor costs that will be applied by the lower courts. The trial court issued an opinion and order entering judgment in favor of the three plaintiff utilities for a total of approximately \$143 million in damages resulting from the Department's delay in beginning to accept spent fuel for disposal. These cases, involving shut down reactors (one at each site) owned by Yankee Atomic, Maine Yankee, and Connecticut Yankee, were tried in August 2004. The trial court's opinion and order applied to all three cases. Individual damage amounts awarded to each utility were: Yankee Atomic--\$32,866,087; Connecticut Yankee--\$34,154,879; and Maine Yankee--\$75,774,554. Because the claims were for partial breach of contract, the damages are limited to actual mitigation costs incurred (for reracking and constructing ISFSIs) through 2001 for Yankee Atomic and Connecticut Yankee and through 2002 for Maine Yankee. The three utilities had sought \$428 million for mitigation and future damages. (J. Taylor, GC-31, 586-7530)



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DAVID H. MEYER

SENIOR POLICY ADVISOR

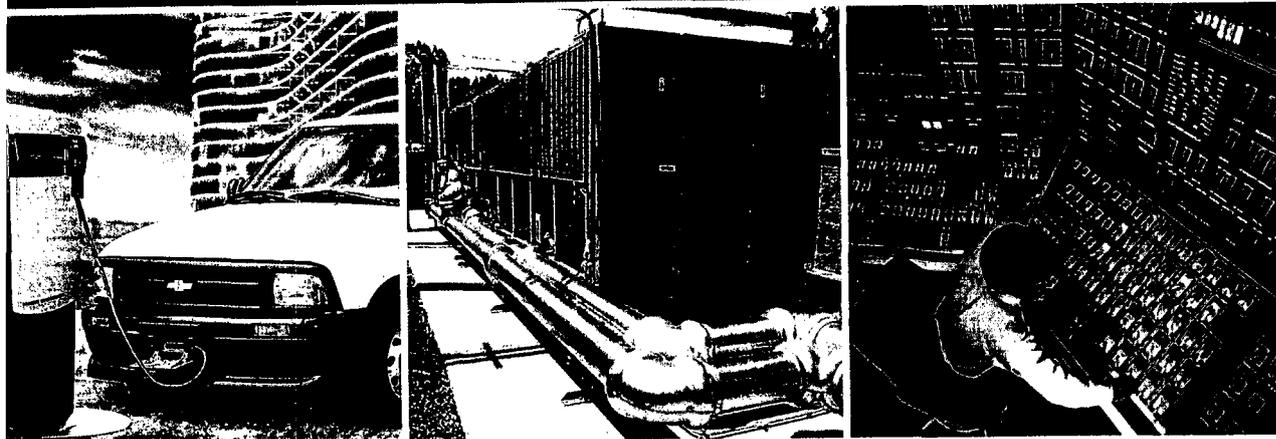
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A Report of
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December 2008



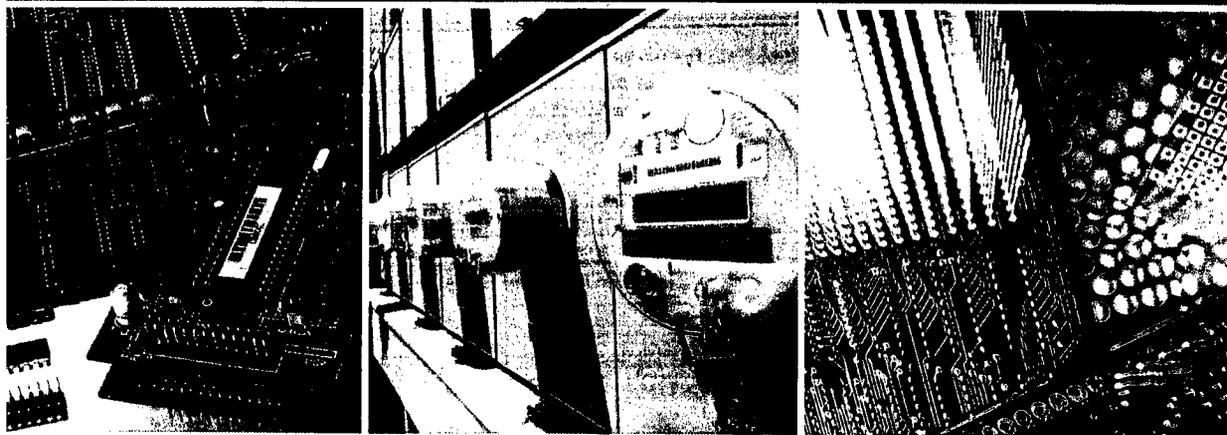
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ELECTRICITY ADVISORY COMMITTEE

U.S. DEPARTMENT OF ENERGY

Smart Grid: Enabling an Economically and Environmentally Sustainable Future

A Report of
The Electricity Advisory Committee
December 2008





Department of Energy
National Nuclear Security Administration
Washington, DC 20585

November 21, 2008

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR LAURIE MORMAN

FROM:

BILL BARKER

A handwritten signature in cursive script that reads "Bill Barker".

Subject:

Information on the Lab Vision Initiative

During the Thursday, November 20, 2008, meeting on the NNSA Overview, we were asked to provide a copy of the Lab Vision Paper, which I transmitted to you late yesterday. In addition, we were asked several questions on this initiative concerning what is being done to implement this paper now and what would we recommend the next Administration consider doing to continue the implementation of the Vision. A copy of the Vision Paper and answers to these questions are attached.

Attachment: As stated



Future Vision and Mission of the NNSA and its Laboratories

- **What is being done during this Administration to implement the Vision?**

I. Reports

- Several outside entities are examining the broader mission responsibilities of the NNSA. These include:
 1. The Defense Science Board Task Force on NNSA Strategic Plans for Advanced Computing (in preparation; expected date of completion: January 2009): this taskforce is examining the NNSA vision of supporting stockpile stewardship as well as a spectrum of national security challenges.
 2. The Stimson Center (Chair: Fran Townsend) – Examining the broader national security role of the NNSA.
- In addition, there is the Defense Science Board Task Force on Nuclear Deterrence Skills Report (“the Chiles Report”): this report assessed the nuclear security enterprise workforce and observed the importance of broader responsibilities to keep the primary mission viable.
- There are two reports to Congress due in December, one on the NNSA Science and Technology (S&T) strategy and the second on the NNSA supercomputing strategy in broader missions.

II. MOUs with Partner Agencies

- The NNSA is pursuing MOUs with partner agencies that would allow the NNSA to shift from tactical to strategic relationships. These include approaching national grand challenges issues:
 - An MOU with DTRA on Nuclear Weapons Effects, Survivability and Nuclear Counter Terrorism;
 - Missile Defense Agency; and,
 - DHS on nuclear forensics, attribution and related problems of detection.

III. Creation of a placeholder within the NNSA for cross-cutting national security grand-challenges

- **What do you recommend the next Administration do to continue to implement the Vision?**
 - The Department of Energy has been committed to investing in the people and the Nation’s scientific infrastructure in order to enhance essential capabilities used to solve defense, energy, and other critical security issues.

Several issues remain:

1. Continued coordination and involvement with other agencies as well as organization both within and outside the DOE to modernize the NNSA portfolio, enabling it not only to retain competency in its primary mission, but to unleash the unparalleled S&T capabilities on more current national grand challenges.
2. Support a more prominent S&T organization within the NNSA that has responsibility to apply stockpile stewardship level power to current national security needs.



A Future Vision for NNSA's National Security Laboratories

"Transforming the Nuclear Weapons Complex into a National Security Enterprise"

The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) laboratories employ world-class scientists and engineers and maintain truly unique national assets. These laboratories have led science, technology, and engineering efforts that enabled major changes in the U.S. national security posture. As the Nation faces a changed world in which monolithic threats no longer dominate, the means to disrupt an increasingly technology-based society are rapidly multiplying. As a consequence, NNSA and its national security laboratories have been called upon even more than before to devote their immense capabilities to responsibilities that are not limited solely to the historic nuclear weapons core mission, but are more expansive and encompass a spectrum of national security missions.

NNSA National Security Laboratories

- Los Alamos National Laboratory
- Sandia National Laboratories
- Lawrence Livermore National Laboratory
- Nevada Test Site (User Facility)

Commitment

The Department of Energy is committed to invest in the people and the Nation's scientific infrastructure in order to enhance essential capabilities used by the Nation to solve defense, energy and other critical security issues. To contribute its unique capabilities, NNSA will partner with other segments of DOE and other agencies with national security responsibilities to direct and enhance the underlying science, technology, and engineering capabilities available to the Nation.

National Security Laboratory Centers of Excellence

Enhancing this broadened national security role requires leadership and support from NNSA and the other elements of the Department as well as investments by the broader national security community. Each laboratory and the Nevada Test Site will maintain a broad multidisciplinary portfolio of competencies and may develop centers of excellence in specific technical areas to more effectively contribute to the Nation's current requirements. This broadened current national security role for NNSA and its laboratories will require continuity and stability for their core nuclear-deterrent mission as they continue to evolve to provide the Nation a critical advantage in meeting security challenges in the 21st century.


Secretary of Energy

19 June 08
Date

A Future Vision for NNSA's National Security Laboratories

The National Nuclear Security Administration's (NNSA's) national security laboratories - Los Alamos National Laboratory, Sandia National Laboratories, and Lawrence Livermore National Laboratory¹ - consisting of world class scientists and engineers, comprise true and unique national assets. These laboratories, in partnership with NNSA and its predecessors, have led large-scale science, technology and engineering (ST&E) efforts that enabled major changes in the US national security posture. From the innovation that contributed to the end of the Cold-War - the technical base that allowed the US to commit to the nuclear testing moratorium and the development of nuclear weapons life-extension programs - to the application of technical solutions that enable a safer and more secure nuclear weapons stockpile without resorting to full-scale nuclear testing, NNSA's national security laboratories necessarily developed broad and deep, multi-disciplinary, science-based enterprises that span all the way from basic scientific discovery to successful product delivery.

As the nation moved into the post-Cold-War era, we recognized a changed world in which monolithic threats no longer dominate, and the means to disrupt an increasingly technology-based society are rapidly multiplying. As a result of the fundamental changes in the national security calculus, in partnership with the Department of Defense and the Congress, NNSA has engaged in planning a transformation of the nuclear weapons complex (the Complex) to realize the responsive infrastructure and enduring science and technology base envisioned by the 2001 Nuclear Posture Review. As an essential element of this transformation effort, NNSA has reevaluated the cold-war infrastructure in its laboratories, plants and sites in the post-cold-war context. The physical footprint of the Complex, as well as the scientific and intellectual human capital required for the future, has been closely examined with NNSA concluding that consolidation across the Complex can and should proceed. NNSA and its national security laboratories have reached a consensus that their future mission is not limited solely to the historic nuclear weapons core mission, but rather is a more expansive one encompassing the full spectrum of national security interests.

The scientific capabilities and infrastructure developed for the nuclear weapons mission have been utilized by many national security agencies and are recognized as essential to fulfilling their responsibilities. Maintenance of a strong infrastructure -- both the workforce and the facilities -- will require joint support from these national security agencies, as well as careful planning and budgeting by NNSA and its national laboratories, to enable this broader national security mission.

As the federal agency that directs immense interdisciplinary projects in which fundamental science is the essential tool, NNSA will lead the national security laboratories in the structural extension of the historical nuclear weapons mission to broaden support for this more complete national security mission. NNSA, as the landlord for the defense laboratories, provides internal coherence across the national security programs, a coherence that fosters the synergies across scientific and technical disciplines important to complex missions. NNSA also provides a single management umbrella within the federal government for championing a broader

¹ The term "national security laboratory" is defined in Section 3281 of the National Nuclear Security Administration Act as including Los Alamos National Laboratory, Sandia National Laboratories, and Lawrence Livermore National Laboratory. Because of the vital role of the Nevada Test Site (NTS) as a "user facility" for the national security laboratories, the undersigned include NTS in a more expansive view of what constitutes the national security laboratories.

national security ST&E base that is critical to meeting commitments to the nuclear weapons stockpile as well as developing technologies to address evolving 21st century post-cold-war needs. For their part, the national security laboratories bring the world-class science and engineering talent as well as the perspective of what is required to sustain this truly unique capability to handle one-of-a-kind national security challenges for decades into the future. Together, NNSA and the national security laboratories are well-positioned to create a future that ensures an appropriate balance of science and technology base investment and work, both for NNSA and other federal agencies, to guarantee that these national assets remain vital and relevant.

Re-Orienting the Enterprise

An enduring ST&E core is essential for nuclear weapons and is critical to the broader national security challenges faced by the country in the 21st century. The Department of Energy (DOE) and NNSA are committed to invest in the necessary elements of the scientific infrastructure, sustain essential capabilities that can be exploited to meet other agency needs, and build relationships with these other agencies for joint problem-solving. The national security laboratories will maintain and strengthen their recognized world-class capabilities for developing solutions to large, complex problems that challenge our national security.

NNSA's nuclear weapons life-extension programs demonstrate that large-scale technology hand-offs through long-term inter-agency plans are viable, reflecting the entire course from basic research to product deployment. This demonstrated capability will benefit partnering agencies in meeting their national security responsibilities. Where the national laboratories expanded mission intersects with the responsibilities of other agencies, it is natural to explore joint activities and a shared commitment to the requisite funding.

Application of Unique Capabilities to a Broader National Security Mission

The core nuclear weapons mission will always require committed national security laboratories that are distinguished by:

- Inherently high-security environments involving classified work,
- Multidisciplinary approaches
- Broad and deep intellectual fabric for the future
- Responsiveness to national urgencies
- Ability to conduct high-hazard complex experiments,
- Structure to deliver critical integrated technical solutions on a short schedule, and
- Long-term commitment to technical excellence, integrity, and innovation across a wide range of ST&E.

The unique competencies in science, technology, and engineering of the NNSA and its laboratories, are equally applicable to a wide range of pressing national security responsibilities that fall under the aegis of DOE and other federal agencies. The broad range of research and development activities at the NNSA laboratories also ensures that the nation is equipped to deal with technological surprises and anticipate new national security threats. Indeed, consistent with the act establishing the NNSA² and recent Congressional language³, the role of NNSA

² *Public Law 106-65*, October 5, 1999.

³ For example, see Senate Energy and Water Appropriations for FY 2008, S1715 Report 110-127, p. 151

laboratories clearly is aligned with and responsive to the national security environment of the 21st century.

A sampling of ST&E areas of expertise that the NNSA laboratories can bring to the national security mission include sensor and detection technology, high-performance computing, microsystems, chem/bio technology, and explosives science. The NNSA laboratories have been jointly participating with other government agencies in addressing a wide-range of national security challenges. Recent examples include: (1) supporting war fighter needs in Iraq with IED modeling and analysis, (2) supporting DoD and FBI in emergency render-safe team and post-event technical nuclear forensics, (3) aiding the intelligence community in its counterterrorism and nonproliferation efforts by drawing upon our nuclear weapons expertise, (4) developing and deploying integrated systems for countering aerosolized bioterrorist releases and bio-decontamination technologies, and (5) developing and deploying portal detector technology to prevent smuggling of special nuclear materials. In addition, basic research at the national security laboratories has provided technology for airborne detection of toxic chemicals, critical infrastructure modeling for disaster response, and modeling of response strategies for potential influenza pandemics.

In the broader context of national security issues facing our nation, these Laboratories have been partners in understanding the effects of human activities on our environment and in developing innovative energy supply technologies. Indeed, in the nuclear power arena these laboratories are key contributors to finding an integrated solution to problems of wide-spread use of nuclear power and nuclear proliferation.

Effectively addressing complex threats to our national security such as nuclear and biological terrorism, cyber attacks, and nuclear proliferation requires a sustained national commitment to innovative science-based technological and engineering solutions. This is also true for the broader national challenges of energy security at the overlap of energy, water, environmental consequences, and traditional national security challenges. To perform the core nuclear deterrent mission, the Executive Branch and the Congress continue to support a unique science-based culture at the NNSA national security laboratories – one that integrates multiple disciplines to solve highly complex technical problems that often have no previously known solutions. Although efforts listed above meet the immediate needs of the respective agencies, a more systematic and enduring approach to leveraging the NNSA laboratories' unique capabilities for high-priority national security challenges is essential to the nation. To be able to contribute its unique capabilities, NNSA will partner with other segments of the DOE and other agencies with national security responsibilities to direct and support the underlying science, technology, and engineering development at the national security laboratories, rather than just soliciting funding for individual short-term technology applications.

Defense Laboratory Centers of Excellence

NNSA is focusing on improving integration among the laboratories to exploit major facilities that are not duplicated, such as DARHT, NIF, ZR, MESA⁴ and the Nevada Test Site underground resources, while sustaining the essential ST&E agility of each laboratory through a

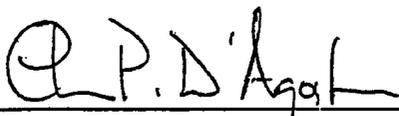
⁴ Dual Axis Radiographic Hydrodynamic Test Facility, National Ignition Facility, Z Refurbishment Project, Microsystems and Engineering Sciences Application facility

range of investments in a broad base of local competencies. It is important to recognize that certain major capabilities are needed at *each* of the science and engineering laboratories if they are to continue to effectively contribute to national security. For example, high-performance computing and its integration with theory and modeling have become essential tools for predictive science and engineering across the entire Complex, including the laboratories and the plants.

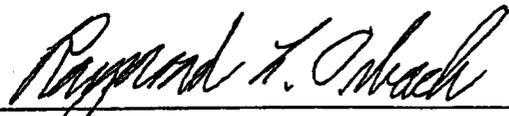
Each laboratory and the NTS will continue to emphasize different areas as distinguishing strengths of their necessarily broad multidisciplinary portfolios of competencies. Los Alamos emphasizes materials and matter-radiation interactions; Lawrence Livermore emphasizes high-power lasers and high energy density science; Sandia emphasizes systems engineering and microtechnology; the Nevada Test Site emphasizes high-hazard experimentation. Within each laboratory, centers of excellence in specific technical areas may be developed consistent with a jointly agreed upon vision of NNSA and the respective national security laboratory. As with the Office of Science nanotechnology centers, this may mean that each laboratory approaches a common area of ST&E with a different approach and perspective linked to its pre-existing competencies. Enabling this broadened national security role will require leadership and direct funding from NNSA and DOE, as well as investments by the broader national security community.

Summary

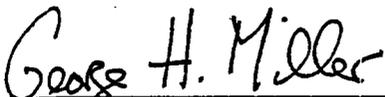
The undersigned will advocate for and enable a broader national-security role for NNSA and its laboratories. In doing so, NNSA and its laboratories can ensure continuity and stability for their core nuclear-deterrent mission as they evolve to provide the nation a critical advantage in meeting 21st century national security challenges. The nation's ability to respond to as yet unknown challenging national security problems in the future demands nothing less.



Undersecretary for Nuclear Security



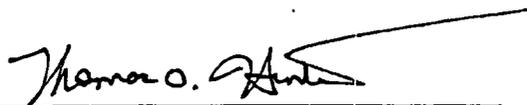
Undersecretary for Science



Director, Lawrence Livermore
National Laboratory



Director, Los Alamos National Laboratory



Director, Sandia National Laboratories



President, NS Tech LLC; Nevada Test Site

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Dr. Michael Corradini, University of Wisconsin
Madison, Madison, WI

Mr. Marvin Fertel, Nuclear Energy Institute,
Washington, D.C.

Dr. Sue Ion,
Lancashire, U.K.

Dan Poneman, The Scowcroft Group
Washington, D.C.

Dr. Burton Richter, Director Emeritus
Stanford Linear Accelerator Center,
Menlo Park, CA

Dr. Allen L. Sessoms, Delaware State
University, Dover, DE

Dr. Neil Todreas, Massachusetts Institute of
Technology, Cambridge, MA

Dr. Kunihiko Uematsu, Japan Atomic
International Forum,
Minato-ku, Japan

Designated Officer: Kenneth C. Wade
Federal U. S. Department of Energy

Support: Nancy Carder
Frederick O'Hara, Jr.
Michael G. Schmidt
Craig Williamson

From:

Shane

Johnson

Copies for:
Skila and Bob



Department of Energy
National Nuclear Security Administration
Washington, DC 20585

November 20, 2008

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR LAURIE MORMAN

FROM: BILL BARKER *Bill*
NNSA

SUBJECT: Information on NNSA Requested During Transition Briefings

The attached information is provided in response to questions or requests for information during today's briefings/meetings on NNSA programs, activities, etc.

TAB 1- Lab Vision Paper – “Transforming the Nuclear Weapons Complex into a National Security Enterprise” – additional information concerning what is being done during this Administration to implement this paper (e.g. MOU with DTRA; etc.) and recommendations for the next Administration to consider for the potential continuation of this implementation is being drafted and will be provided as soon as possible.

TAB 2 – Congressional language on the Reliable Replacement Warhead (RRW) – National Defense Authorization Act for Fiscal Year 2006 – Bill (statutory language) and Conference Committee language.

TAB 3 – Cover letter from Henry Kissinger to Senator Kyl forwarding a letter from George Schultz and Sidney Drell concerning their support to continue research on new RRW designs.

Budget Information:

- A briefing on the 2010 Request is being scheduled.
- A stat table which provides details down to the Program Level and which shows the changes between the various levels is being developed.
- Funding profiles for Defense Programs activities (e.g. CMRR, PDCF, the B-61 LEP, etc.) will be provided as soon as possible.

Preferred Alternatives Briefing on Complex Transformation is being scheduled.

Information on policy decisions recently made, those to be made, and, those to be revisited are being drafted.



A paper on potential issues the new Secretary of Energy should consider discussing with the President is being drafted.

A list of potential items to “hand-off” to the new Administration is being developed.

While the above list is not all inclusive, we are developing a complete list and we are tracking the progress on all items to make sure all items are completed as soon as possible.

Attachments: As stated





A Future Vision for NNSA's National Security Laboratories

"Transforming the Nuclear Weapons Complex into a National Security Enterprise"

The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) laboratories employ world-class scientists and engineers and maintain truly unique national assets. These laboratories have led science, technology, and engineering efforts that enabled major changes in the U.S. national security posture. As the Nation faces a changed world in which monolithic threats no longer dominate, the means to disrupt an increasingly technology-based society are rapidly multiplying. As a consequence, NNSA and its national security laboratories have been called upon even more than before to devote their immense capabilities to responsibilities that are not limited solely to the historic nuclear weapons core mission, but are more expansive and encompass a spectrum of national security missions.

NNSA National Security Laboratories

- Los Alamos National Laboratory
- Sandia National Laboratories
- Lawrence Livermore National Laboratory
- Nevada Test Site (User Facility)

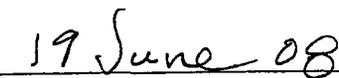
Commitment

The Department of Energy is committed to invest in the people and the Nation's scientific infrastructure in order to enhance essential capabilities used by the Nation to solve defense, energy and other critical security issues. To contribute its unique capabilities, NNSA will partner with other segments of DOE and other agencies with national security responsibilities to direct and enhance the underlying science, technology, and engineering capabilities available to the Nation.

National Security Laboratory Centers of Excellence

Enhancing this broadened national security role requires leadership and support from NNSA and the other elements of the Department as well as investments by the broader national security community. Each laboratory and the Nevada Test Site will maintain a broad multidisciplinary portfolio of competencies and may develop centers of excellence in specific technical areas to more effectively contribute to the Nation's current requirements. This broadened current national security role for NNSA and its laboratories will require continuity and stability for their core nuclear-deterrent mission as they continue to evolve to provide the Nation a critical advantage in meeting security challenges in the 21st century.


Secretary of Energy


Date

A Future Vision for NNSA's National Security Laboratories

The National Nuclear Security Administration's (NNSA's) national security laboratories - Los Alamos National Laboratory, Sandia National Laboratories, and Lawrence Livermore National Laboratory¹ - consisting of world class scientists and engineers, comprise true and unique national assets. These laboratories, in partnership with NNSA and its predecessors, have led large-scale science, technology and engineering (ST&E) efforts that enabled major changes in the US national security posture. From the innovation that contributed to the end of the Cold-War – the technical base that allowed the US to commit to the nuclear testing moratorium and the development of nuclear weapons life-extension programs – to the application of technical solutions that enable a safer and more secure nuclear weapons stockpile without resorting to full-scale nuclear testing, NNSA's national security laboratories necessarily developed broad and deep, multi-disciplinary, science-based enterprises that span all the way from basic scientific discovery to successful product delivery.

As the nation moved into the post-Cold-War era, we recognized a changed world in which monolithic threats no longer dominate, and the means to disrupt an increasingly technology-based society are rapidly multiplying. As a result of the fundamental changes in the national security calculus, in partnership with the Department of Defense and the Congress, NNSA has engaged in planning a transformation of the nuclear weapons complex (the Complex) to realize the responsive infrastructure and enduring science and technology base envisioned by the 2001 Nuclear Posture Review. As an essential element of this transformation effort, NNSA has reevaluated the cold-war infrastructure in its laboratories, plants and sites in the post-cold-war context. The physical footprint of the Complex, as well as the scientific and intellectual human capital required for the future, has been closely examined with NNSA concluding that consolidation across the Complex can and should proceed. NNSA and its national security laboratories have reached a consensus that their future mission is not limited solely to the historic nuclear weapons core mission, but rather is a more expansive one encompassing the full spectrum of national security interests.

The scientific capabilities and infrastructure developed for the nuclear weapons mission have been utilized by many national security agencies and are recognized as essential to fulfilling their responsibilities. Maintenance of a strong infrastructure -- both the workforce and the facilities -- will require joint support from these national security agencies, as well as careful planning and budgeting by NNSA and its national laboratories, to enable this broader national security mission.

As the federal agency that directs immense interdisciplinary projects in which fundamental science is the essential tool, NNSA will lead the national security laboratories in the structural extension of the historical nuclear weapons mission to broaden support for this more complete national security mission. NNSA, as the landlord for the defense laboratories, provides internal coherence across the national security programs, a coherence that fosters the synergies across scientific and technical disciplines important to complex missions. NNSA also provides a single management umbrella within the federal government for championing a broader

¹ The term "national security laboratory" is defined in Section 3281 of the National Nuclear Security Administration Act as including Los Alamos National Laboratory, Sandia National Laboratories, and Lawrence Livermore National Laboratory. Because of the vital role of the Nevada Test Site (NTS) as a "user facility" for the national security laboratories, the undersigned include NTS in a more expansive view of what constitutes the national security laboratories.

national security ST&E base that is critical to meeting commitments to the nuclear weapons stockpile as well as developing technologies to address evolving 21st century post-cold-war needs. For their part, the national security laboratories bring the world-class science and engineering talent as well as the perspective of what is required to sustain this truly unique capability to handle one-of-a-kind national security challenges for decades into the future. Together, NNSA and the national security laboratories are well-positioned to create a future that ensures an appropriate balance of science and technology base investment and work, both for NNSA and other federal agencies, to guarantee that these national assets remain vital and relevant.

Re-Orienting the Enterprise

An enduring ST&E core is essential for nuclear weapons and is critical to the broader national security challenges faced by the country in the 21st century. The Department of Energy (DOE) and NNSA are committed to invest in the necessary elements of the scientific infrastructure, sustain essential capabilities that can be exploited to meet other agency needs, and build relationships with these other agencies for joint problem-solving. The national security laboratories will maintain and strengthen their recognized world-class capabilities for developing solutions to large, complex problems that challenge our national security.

NNSA's nuclear weapons life-extension programs demonstrate that large-scale technology hand-offs through long-term inter-agency plans are viable, reflecting the entire course from basic research to product deployment. This demonstrated capability will benefit partnering agencies in meeting their national security responsibilities. Where the national laboratories expanded mission intersects with the responsibilities of other agencies, it is natural to explore joint activities and a shared commitment to the requisite funding.

Application of Unique Capabilities to a Broader National Security Mission

The core nuclear weapons mission will always require committed national security laboratories that are distinguished by:

- Inherently high-security environments involving classified work,
- Multidisciplinary approaches
- Broad and deep intellectual fabric for the future
- Responsiveness to national urgencies
- Ability to conduct high-hazard complex experiments,
- Structure to deliver critical integrated technical solutions on a short schedule, and
- Long-term commitment to technical excellence, integrity, and innovation across a wide range of ST&E.

The unique competencies in science, technology, and engineering of the NNSA and its laboratories, are equally applicable to a wide range of pressing national security responsibilities that fall under the aegis of DOE and other federal agencies. The broad range of research and development activities at the NNSA laboratories also ensures that the nation is equipped to deal with technological surprises and anticipate new national security threats. Indeed, consistent with the act establishing the NNSA² and recent Congressional language³, the role of NNSA

² *Public Law 106-65*, October 5, 1999.

³ For example, see Senate Energy and Water Appropriations for FY 2008, S1715 Report 110-127, p. 151

laboratories clearly is aligned with and responsive to the national security environment of the 21st century.

A sampling of ST&E areas of expertise that the NNSA laboratories can bring to the national security mission include sensor and detection technology, high-performance computing, microsystems, chem/bio technology, and explosives science. The NNSA laboratories have been jointly participating with other government agencies in addressing a wide-range of national security challenges. Recent examples include: (1) supporting war fighter needs in Iraq with IED modeling and analysis, (2) supporting DoD and FBI in emergency render-safe team and post-event technical nuclear forensics, (3) aiding the intelligence community in its counterterrorism and nonproliferation efforts by drawing upon our nuclear weapons expertise, (4) developing and deploying integrated systems for countering aerosolized bioterrorist releases and bio-decontamination technologies, and (5) developing and deploying portal detector technology to prevent smuggling of special nuclear materials. In addition, basic research at the national security laboratories has provided technology for airborne detection of toxic chemicals, critical infrastructure modeling for disaster response, and modeling of response strategies for potential influenza pandemics.

In the broader context of national security issues facing our nation, these Laboratories have been partners in understanding the effects of human activities on our environment and in developing innovative energy supply technologies. Indeed, in the nuclear power arena these laboratories are key contributors to finding an integrated solution to problems of wide-spread use of nuclear power and nuclear proliferation.

Effectively addressing complex threats to our national security such as nuclear and biological terrorism, cyber attacks, and nuclear proliferation requires a sustained national commitment to innovative science-based technological and engineering solutions. This is also true for the broader national challenges of energy security at the overlap of energy, water, environmental consequences, and traditional national security challenges. To perform the core nuclear deterrent mission, the Executive Branch and the Congress continue to support a unique science-based culture at the NNSA national security laboratories – one that integrates multiple disciplines to solve highly complex technical problems that often have no previously known solutions. Although efforts listed above meet the immediate needs of the respective agencies, a more systematic and enduring approach to leveraging the NNSA laboratories' unique capabilities for high-priority national security challenges is essential to the nation. To be able to contribute its unique capabilities, NNSA will partner with other segments of the DOE and other agencies with national security responsibilities to direct and support the underlying science, technology, and engineering development at the national security laboratories, rather than just soliciting funding for individual short-term technology applications.

Defense Laboratory Centers of Excellence

NNSA is focusing on improving integration among the laboratories to exploit major facilities that are not duplicated, such as DARHT, NIF, ZR, MESA⁴ and the Nevada Test Site underground resources, while sustaining the essential ST&E agility of each laboratory through a

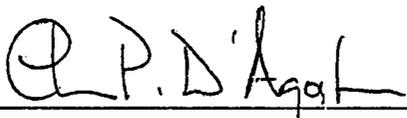
⁴ Dual Axis Radiographic Hydrodynamic Test Facility, National Ignition Facility, Z Refurbishment Project, Microsystems and Engineering Sciences Application facility

range of investments in a broad base of local competencies. It is important to recognize that certain major capabilities are needed at *each* of the science and engineering laboratories if they are to continue to effectively contribute to national security. For example, high-performance computing and its integration with theory and modeling have become essential tools for predictive science and engineering across the entire Complex, including the laboratories and the plants.

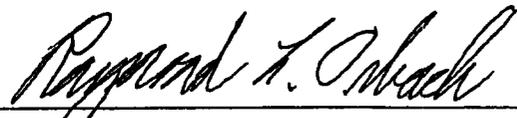
Each laboratory and the NTS will continue to emphasize different areas as distinguishing strengths of their necessarily broad multidisciplinary portfolios of competencies. Los Alamos emphasizes materials and matter-radiation interactions; Lawrence Livermore emphasizes high-power lasers and high energy density science; Sandia emphasizes systems engineering and microtechnology; the Nevada Test Site emphasizes high-hazard experimentation. Within each laboratory, centers of excellence in specific technical areas may be developed consistent with a jointly agreed upon vision of NNSA and the respective national security laboratory. As with the Office of Science nanotechnology centers, this may mean that each laboratory approaches a common area of ST&E with a different approach and perspective linked to its pre-existing competencies. Enabling this broadened national security role will require leadership and direct funding from NNSA and DOE, as well as investments by the broader national security community.

Summary

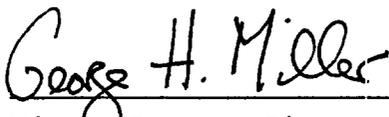
The undersigned will advocate for and enable a broader national-security role for NNSA and its laboratories. In doing so, NNSA and its laboratories can ensure continuity and stability for their core nuclear-deterrent mission as they evolve to provide the nation a critical advantage in meeting 21st century national security challenges. The nation's ability to respond to as yet unknown challenging national security problems in the future demands nothing less.



Undersecretary for Nuclear Security



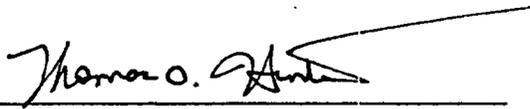
Undersecretary for Science



Director, Lawrence Livermore
National Laboratory



Director, Los Alamos National Laboratory



Director, Sandia National Laboratories



President, NS Tech LLC; Nevada Test Site



PUBLIC LAW 109-163—JAN. 6, 2006

NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2006

Subtitle B—Other Matters

SEC. 3111. RELIABLE REPLACEMENT WARHEAD PROGRAM.

(a) PROGRAM REQUIRED.—The Atomic Energy Defense Act (division D of Public Law 107-314) is amended by inserting after section 4204 (50 U.S.C. 2524) the following new section:

“SEC. 4204a. RELIABLE REPLACEMENT WARHEAD PROGRAM.

50 USC 2524a.

“(a) PROGRAM REQUIRED.—The Secretary of Energy shall carry out a program, to be known as the Reliable Replacement Warhead program, which will have the following objectives:

“(1) To increase the reliability, safety, and security of the United States nuclear weapons stockpile.

“(2) To further reduce the likelihood of the resumption of underground nuclear weapons testing.

“(3) To remain consistent with basic design parameters by including, to the maximum extent feasible and consistent with the objective specified in paragraph (2), components that are well understood or are certifiable without the need to resume underground nuclear weapons testing.

“(4) To ensure that the nuclear weapons infrastructure can respond to unforeseen problems, to include the ability to produce replacement warheads that are safer to manufacture, more cost-effective to produce, and less costly to maintain than existing warheads.

“(5) To achieve reductions in the future size of the nuclear weapons stockpile based on increased reliability of the reliable replacement warheads.

“(6) To use the design, certification, and production expertise resident in the nuclear complex to develop reliable replacement components to fulfill current mission requirements of the existing stockpile.

“(7) To serve as a complement to, and potentially a more cost-effective and reliable long-term replacement for, the current Stockpile Life Extension Programs.

“(b) CONSULTATION.—The Secretary of Energy shall carry out the Reliable Replacement Warhead program in consultation with the Secretary of Defense.”

(b) REPORT.—Not later than March 1, 2007, the Secretary of Energy and the Secretary of Defense shall submit to the congressional defense committees a report on the feasibility and implementation of the Reliable Replacement Warhead program required by section 4204a of the Atomic Energy Defense Act, as added by subsection (a). The report shall—

(1) identify existing warheads recommended for replacement by 2035 with an assessment of the weapon performance and safety characteristics of the replacement warheads;

(2) discuss the relationship of the Reliable Replacement Warhead program within the Stockpile Stewardship Program and its impact on the current Stockpile Life Extension Programs;

(3) provide an assessment of the extent to which a successful Reliable Replacement Warhead program could lead to reductions in the nuclear weapons stockpile;

(4) discuss the criteria by which replacement warheads under the Reliable Replacement Warhead program will be

designed to maximize the likelihood of not requiring nuclear testing, as well as the circumstances that could lead to a resumption of testing;

(5) provide a description of the infrastructure, including pit production capabilities, required to support the Reliable Replacement Warhead program;

(6) provide a detailed summary of how the funds made available pursuant to the authorizations of appropriations in this Act, and any funds made available in prior years, will be used; and

(7) provide an estimate of the comparative costs of a reliable replacement warhead and the stockpile life extension for the warheads identified in paragraph (1).

(c) **INTERIM REPORT.**—Not later than March 1, 2006, the Secretary of Energy and the Secretary of Defense shall submit to the congressional defense committees an interim report on the matters required to be covered by the report under subsection (b).

(d) **CONSULTATION.**—The Secretary of Energy and the Secretary of Defense shall prepare the reports required by subsections (b) and (c) in consultation with the Nuclear Weapons Council.

Colorado.

SEC. 3112. ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE.

(a) **DEFINITIONS.**—In this section:

(1) **ESSENTIAL MINERAL RIGHT.**—The term “essential mineral right” means a right to mine sand and gravel at Rocky Flats, as depicted on the map.

(2) **FAIR MARKET VALUE.**—The term “fair market value” means the value of an essential mineral right, as determined by an appraisal performed by an independent, certified mineral appraiser under the Uniform Standards of Professional Appraisal Practice.

(3) **MAP.**—The term “map” means the map entitled “Rocky Flats National Wildlife Refuge”, dated July 25, 2005, and available for inspection in appropriate offices of the United States Fish and Wildlife Service and the Department of Energy.

(4) **NATURAL RESOURCE DAMAGE LIABILITY CLAIM.**—The term “natural resource damage liability claim” means a natural resource damage liability claim under subsections (a)(4)(C) and (f) of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) arising from hazardous substances releases at or from Rocky Flats that, as of the date of enactment of this Act, are identified in the administrative record for Rocky Flats required by the National Oil and Hazardous Substances Pollution Contingency Plan prepared under section 105 of that Act (42 U.S.C. 9605).

(5) **ROCKY FLATS.**—The term “Rocky Flats” means the Department of Energy facility in the State of Colorado known as the “Rocky Flats Environmental Technology Site”.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Energy.

(7) **TRUSTEES.**—The term “Trustees” means the Federal and State officials designated as trustees under section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)).

(b) **PURCHASE OF ESSENTIAL MINERAL RIGHTS.**—

109TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
109-360

**NATIONAL DEFENSE AUTHORIZATION
ACT FOR FISCAL YEAR 2006**

CONFERENCE REPORT

TO ACCOMPANY

H.R. 1815



DECEMBER 18, 2005.—Ordered to be printed

SEC. 3103. OTHER DEFENSE ACTIVITIES.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2006 for other defense activities in carrying out programs necessary for national security in the amount of \$641,998,000.

SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2006 for defense nuclear waste disposal for payment to the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount of \$350,000,000.

Subtitle B—Other Matters

SEC. 3111. RELIABLE REPLACEMENT WARHEAD PROGRAM.

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“(3) To remain consistent with basic design parameters by including, to the maximum extent feasible and consistent with the objective specified in paragraph (2), components that are well understood or are certifiable without the need to resume underground nuclear weapons testing.

“(4) To ensure that the nuclear weapons infrastructure can respond to unforeseen problems, to include the ability to produce replacement warheads that are safer to manufacture, more cost-effective to produce, and less costly to maintain than existing warheads.

“(5) To achieve reductions in the future size of the nuclear weapons stockpile based on increased reliability of the reliable replacement warheads.

“(6) To use the design, certification, and production expertise resident in the nuclear complex to develop reliable replacement components to fulfill current mission requirements of the existing stockpile.

“(7) To serve as a complement to, and potentially a more cost-effective and reliable long-term replacement for, the current Stockpile Life Extension Programs.

“(b) CONSULTATION.—The Secretary of Energy shall carry out the Reliable Replacement Warhead program in consultation with the Secretary of Defense.”.

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section 4204a of the Atomic Energy Defense Act, as added by subsection (a). The report shall—

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(3) provide an assessment of the extent to which a successful Reliable Replacement Warhead program could lead to reductions in the nuclear weapons stockpile;

(4) discuss the criteria by which replacement warheads under the Reliable Replacement Warhead program will be designed to maximize the likelihood of not requiring nuclear testing, as well as the circumstances that could lead to a resumption of testing;

(5) provide a description of the infrastructure, including pit production capabilities, required to support the Reliable Replacement Warhead program;

(6) provide a detailed summary of how the funds made available pursuant to the authorizations of appropriations in this Act, and any funds made available in prior years, will be used; and

(7) provide an estimate of the comparative costs of a reliable replacement warhead and the stockpile life extension for the warheads identified in paragraph (1).

(c) **INTERIM REPORT.**—Not later than March 1, 2006, the Secretary of Energy and the Secretary of Defense shall submit to the congressional defense committees an interim report on the matters required to be covered by the report under subsection (b).

(d) **CONSULTATION.**—The Secretary of Energy and the Secretary of Defense shall prepare the reports required by subsections (b) and (c) in consultation with the Nuclear Weapons Council.

SEC. 3112. ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE.

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(3) **MAP.**—The term “map” means the map entitled “Rocky Flats National Wildlife Refuge”, dated July 25, 2005, and available for inspection in appropriate offices of the United States Fish and Wildlife Service and the Department of Energy.

(4) **NATURAL RESOURCE DAMAGE LIABILITY CLAIM.**—The term “natural resource damage liability claim” means a natural resource damage liability claim under subsections (a)(4)(C) and (f) of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) arising from hazardous substances releases at or from Rocky Flats that, as of the date of enactment of this Act, are

Defense environmental cleanup (sec. 3102)

The House bill contained a provision (sec. 3102) that would authorize \$6.3 billion for the Department of Energy for defense environmental management (EM) activities for fiscal year 2006, including funds for defense site acceleration completion and defense environmental services.

The Senate amendment contained a similar provision (sec. 3102) that would authorize \$6.2 billion for defense environmental management.

The conferees agree to authorize \$6.2 billion for defense environmental cleanup, an increase of \$177.3 million above the budget request. Defense environmental cleanup comprises those activities formerly termed defense environmental management.

The conferees note that the statement of managers accompanying the Energy and Water Appropriations Act for Fiscal Year 2006 (Public Law 109-103) provides funding for defense environmental cleanup in a new budget structure, which provides funding by site rather than by the program elements contained in the President's budget request for fiscal year 2006. The conferees direct the Department to submit with the budget request for fiscal year 2007 a funding crosswalk between the budget structure as requested and as appropriated for fiscal year 2006. The conferees also direct the Department to prepare a 5-year funding plan for the environmental cleanup program.

Other defense activities (sec. 3103)

The House bill contained a provision (sec. 3103) that would authorize \$636.0 million for the Department of Energy for other defense activities for fiscal year 2006, the amount of the budget request.

The Senate amendment contained a similar provision (sec. 3103) that would authorize \$563.4 million for the Department for other defense activities, a decrease of \$72.6 million below the budget request.

The conferees agree to authorize \$642.0 million, an increase of \$6.0 million above the budget request.

Defense nuclear waste disposal (sec. 3104)

The House bill contained a provision (sec. 3104) that would authorize \$351.4 million for defense nuclear waste disposal.

The Senate amendment contained a similar provision (sec. 3104) that would authorize \$301.4 million for defense nuclear waste disposal.

The conferees agree to include a provision that would authorize \$350.0 million, a decrease of \$1.4 million below the budget request.

Subtitle B—Other Matters

Reliable Replacement Warhead program (sec. 3111)

The House bill contained a provision (sec. 3111) that would authorize the Secretary of Energy to carry out a Reliable Replacement Warhead program. The provision would establish objectives for the program and require reports to Congress.

The Senate amendment contained no similar provision. In the Senate report accompanying S. 1042 (S. Rept. 109-69) of the National Defense Authorization Act for Fiscal Year 2006, the Senate authorized funds for the program and specified goals for the program.

The Senate recedes with a technical amendment that would add the Secretaries of Defense and Energy to the reporting requirement.

The conferees support the goal of continuing to ensure that the nuclear weapons stockpile remains safe, secure, and reliable. The conferees believe that the Reliable Replacement Warhead program is essential to the achievement of this goal and support its establishment with the objectives as defined in the provision, and as further described in the committee reports of the Committees on Armed Services of the Senate and the House of Representatives for fiscal year 2006.

Rocky Flats Environmental Technology Site (sec. 3112)

The Senate amendment contained a provision (sec. 3116) that would authorize up to \$10.0 million for the purchase of certain mineral rights at the Department of Energy Rocky Flats Environmental Technology Site by the Secretary of Energy and for payment to extinguish all natural resource damage liability at the site.

The House bill contained no similar provision.

The House recedes with an amendment that would specify section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) as the provision of law applicable to natural resource damage liability.

Report on compliance with Design Basis Threat issued by Department of Energy in 2005 (sec. 3113)

The Senate amendment contained a provision (sec. 3111) that would require the Secretary of Energy to submit to the congressional defense committees a report describing plans for upgrading the security posture of the Department of Energy and the National Nuclear Security Administration in response to the design basis threat issued by the Secretary in October 2004.

The House bill contained no similar provision.

The House recedes with a clarifying amendment that would: (1) identify the design basis threat issued by the Department in November 2005 as the design basis threat to be analyzed in the report; (2) require a comparison of the security requirements contained in the design basis threat issued in May 2003 with those contained in the design basis threat issued in November 2005; and (3) require a review by the Government Accountability Office not later than 1 year after enactment of this Act of the Department's plan for complying with the design basis threat of November 2005.

Reports associated with Waste Treatment and Immobilization Plant Project, Hanford Site, Richland, Washington (sec. 3114)

The Senate amendment contained a provision (sec. 3112) that would require the Secretary of Energy to submit to the congressional defense committees an independent cost estimate prepared by the U.S. Army Corps of Engineers for the Waste Treatment and

HENRY A. KISSINGER

August 21, 2007

Dear Senator Kyl:

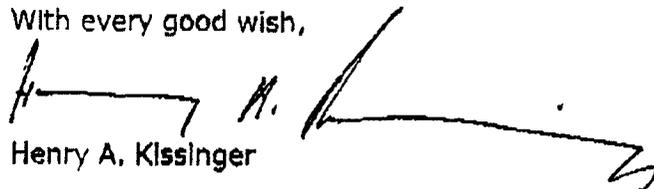
Some weeks ago, you and Senator Domenici inquired about my views regarding the RRW program, especially in light of an article I had published together with George Shultz, Sam Nunn and William Perry in the *Wall Street Journal*.

In order to give you a responsible answer on a subject of this importance, I consulted George Shultz. He, in turn, invited the opinion of Sidney Drell, whom both of us had consulted before writing the article.

The result is the enclosed letter from George Shultz, which he has authorized me to "use directly, to paraphrase or send along with my endorsement."

I have chosen the last option. This letter constitutes my strong endorsement of the views expressed in the basic letter. Specifically, I believe that research and design of the RRW should continue and that the infrastructure to support our current program should be urgently strengthened.

With every good wish,



Henry A. Kissinger

Enclosures: 2 pages

The Honorable
Jon Kyl
United States Senator
730 Hart Senate Office Building
Washington, DC 20510-0304



August 20, 2007

GEORGE P. SHULTZ

THOMAS W. AND SUEAN B. FORD

DISTINGUISHED FELLOW

Dear Henry,

We are writing you with our view of the proper U.S. stance on the issues presented by the Reliable Replacement Warhead Program (RRW) and other matters involved in maintaining the reliability, surety, and safety of our current nuclear stockpile. We both feel that, as long as we have a nuclear deterrent, we should take steps to ensure that it is safe and reliable. We think that the technical skills of the laboratories are first-rate and are being improved by the Stockpile Stewardship Program, which is succeeding in keeping the present stockpile safe and reliable.

The RRW Program seeks to replace our current nuclear weapons with new ones that are safer, more reliable, and more difficult to be used against us were they to be stolen (surety). Additional research is ongoing to establish whether or not a strong technical consensus can be established confirming the possibility of introducing nuclear weapon designs that meet the stated goals of the RRW Program into the stockpile without requiring underground testing for their certification.

Our view is that research work on new RRW designs should certainly go ahead. Such work would make possible the decision to implement the construction phase of the program were that to be desired at some future time. The design work itself is relatively small in cost and need not be viewed in any way as an eventual commitment to go ahead.

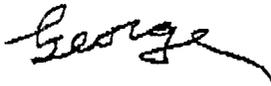
What should go ahead on a reasonably urgent basis is work to upgrade the infrastructure that supports our current program, including some new buildings and equipment. Much of this infrastructure dates back to the early days of the nuclear program and is not adequate today. The upgraded infrastructure is needed to give us the ability to handle plutonium safely, to

Dr. Henry A. Kissinger
August 20, 2007
Page Two

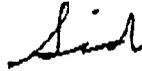
make plutonium pits as needed to replace warheads that are dismantled for analysis and forensic purposes, and to manufacture warheads of any design. This work should proceed since a robust infrastructure will be necessary at every phase of the process of reducing and eliminating nuclear weapons.

An urgent need exists for careful review of our nuclear posture since the size of costly needed infrastructure is directly related to the size of the stockpile.

Sincerely yours,



George P. Shultz



Sidney D. Drell

The Honorable Henry A. Kissinger
Kissinger Associates, Inc.
350 Park Avenue, 26th Floor
New York, NY 10022-6022

To: Laurie
From: David

DOE-Office of Legacy Management (LM) - Uranium Leasing Program

Summary

LM currently administers the Department's Uranium Leasing (UL) Program on 25,000 acres, all located within the Uravan Mineral Belt in southwestern Colorado. In July 2005, the Department undertook a second programmatic EA to determine if the leasing program should continue. On July 6, 2007, DOE finalized the *Uranium Leasing Program Programmatic Environmental Assessment* (ULP PEA) and issued a Finding of No Significant Impact (FONSI) for the preferred Expanded Program alternative. Pursuant to the PEA and FONSI, the Department executed 31 new 10-year lease agreements; 13 new 10-year lease agreements were executed with the existing lessees of the active lease tracts effective April 30, 2008, and 18 new 10-year lease agreements were executed with the successful bidders of the inactive lease tracts effective June 27, 2008.

Discussion

Background -The Atomic Energy Act and other legislative actions authorized the U.S. Atomic Energy Commission (AEC), predecessor agency to the U.S. Department of Energy (Department), to withdraw lands from the public domain and then lease them to private industry for mineral exploration and for development and mining of uranium and vanadium ore. A total of 25,000 acres of land in southwestern Colorado, northern New Mexico, and southeastern Utah was withdrawn from the public domain during the late 1940s and early 1950s.

In 1948, AEC included portions of these lands in 48 mineral leases that were negotiated with adjacent mine owners/operators. This early leasing program ended in 1962. A second leasing program was initiated in 1974. The previously withdrawn lands were then divided into 44 lease tracts and offered to the domestic uranium industry through a competitive bid process. This leasing program included two 10-year lease periods. In 1994, the Department prepared a programmatic Environmental Assessment (EA) to determine if the leasing program should continue. The EA was finalized and approved in July 1995, and a *Finding of No Significant Impact* was issued in August 1995 for the proposed action, the continuation of the leasing program for an additional 10-year period. In 1996, DOE re-offered the respective leases to the previous lessees. Two lessees, controlling a total of 13 lease tracts, chose to continue with the program. This leasing program ended in 2008. In the late 1990's the six lease tracts located in New Mexico (1) and Utah (5) were relinquished by the Department and the lands were restored to the public domain. Accordingly, the 32 existing lease tracts are all located in southwestern Colorado.

During its six decades of existence, ore-production activities administered under the UL Program have yielded approximately 8.0 million pounds of uranium and 41.6 million pounds of vanadium and generated \$58 million in royalties to the federal government. In July 2005, the Department undertook a second programmatic EA to determine if the leasing program should continue.

Status

On July 6, 2007, DOE finalized the *Uranium Leasing Program Programmatic Environmental Assessment* (ULP PEA) and issued a Finding of No Significant Impact (FONSI) for the preferred Expanded Program alternative. Further analysis of the lease tract boundaries resulted in the revision of the original 38 lease tracts boundaries to 32 lease tracts for land management and economic efficiency reasons. Pursuant to the PEA and FONSI, the Department executed 31 new 10-year lease agreements; 13 new 10-year lease agreements were executed with the existing lessees of the active lease tracts effective April 30, 2008, and 18 new 10-year lease agreements were executed with the successful bidders of the inactive lease tracts effective June 27, 2008. One lease tract received no interest during the bid-solicitation process and will remain in inactive status indefinitely. Over 100 interested parties were on the potential bidder's list when the solicitation began, and the 31 leases are now held by a total of 6 companies. Following the award of the leases, the Department, in concert with the U.S. Department of Justice, was served with a civil action lawsuit filed against the Department in Federal District Court for the District of Colorado by four environmental organizations.

New 10-year leases were executed for 31 lease tracts during 2008. Base royalties totaling just under \$500,000 were received from the lessees at the time of execution. Similar royalties will be due annually as the UL Program moves forward. These revenues have been appropriately sent to the Department of Energy Administrative Treasury account. These leases allow the lessees to explore for, develop, and extract uranium and associated minerals. Currently, the lessees are developing exploration plans, working with the state of Colorado on exploration and mine permits, and performing other due diligence activities. The production royalties that are expected when mining actually begins will be based on bids that range from 7.67% up to 36.2%. This was the first bid opening of this kind in 34 years and all of the successful lessees and uranium program leasing information is posted on the LM website at:

http://www.lm.doe.gov/land/sites/uranium_leasing/uranium_leasing.htm .

Major Decisions

As the UL Program continues for the next 10 years, the Department will review, evaluate, and approve (or deny) all lessee plans of operations for exploration and mining. DOE will assure that the public's health and welfare and the environment are protected. DOE's lessees are required to comply with all applicable statutes, rules, and regulations and are required to post reclamation performance bonds with DOE that are sufficient to fund the ultimate reclamation of their respective lease operations. This effort will include concurrent reviews and evaluations by the U.S. Bureau of Land Management and the Colorado Division of Reclamation Mining and Safety. Additionally, the Department will consult with tribal entities that maintain interests within the area.

Critical Events and Action Items

3-Month Events

The Department, in concert with the U.S. Department of Justice, is currently responding to a civil action lawsuit filed against the Department in Federal District Court for the District of Colorado by four environmental organizations. The first deliverable (an index of the Administrative Record for the PEA and FONSI) is due to the court by the end of November 2008. The Administrative Record proper is due to the court by January 22, 2009.

Additionally, the Department will need to meet the administrative requirements of the UL Program, including responding to any/all lessee proposed plans.

12-Month Events

The Department's required efforts in responding to the civil action lawsuit are unknown at this time. The ongoing administrative requirements of the UL Program will continue and may increase during this period. These activities include lease administration and oversight, collection of royalties and transmittal to the Department's Administrative Account, exploration and mining plan review and approval, and closure and reclamation of non-DOE abandoned mines on DOE leases tracts.

Sensitivities

The civil action lawsuit will remain a sensitive issue until it is fully resolved. Additionally, there are environmental and economic sensitivities both pro and con to this program.

Congressional Interests

In the past, the Department has responded to Congressional inquiries associated with legislative actions being proposed to revise the 1872 mining law that regulates how mining interests are managed on public lands administered by the Department of Interior, Bureau of Land Management and the Department of Agriculture, Forest Service. These discussions have included the Department's different legislatively authorized ability to assess and collect royalties on mineral extraction and the various similarities and differences between the UL Program activities and those conducted under the 1872 Mining Law.

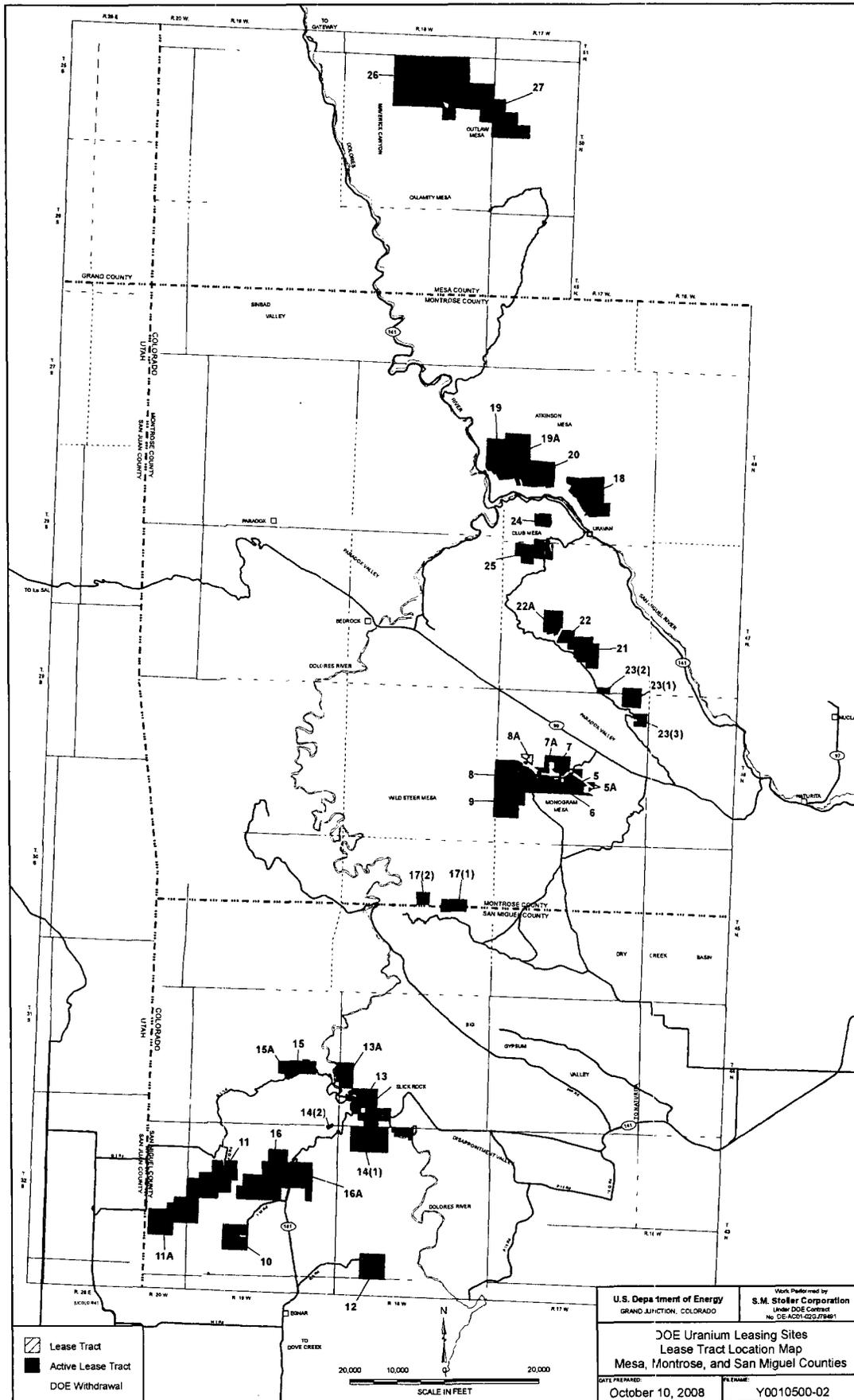
Organizational Info

LM Organization Name: LM-20

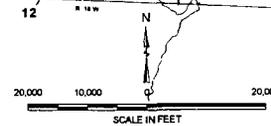
POC: Steve Schiesswohl

POC Phone Number: (720) 377-9683

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▭ Lease Tract
 ■ Active Lease Tract
 □ DOE Withdrawal



U.S. Department of Energy
 GRAND JUNCTION, COLORADO

Work Performed by
S.M. Stoller Corporation
 Under DOE Contract
 No. DE-AC02-02-OR21464

**DOE Uranium Leasing Sites
 Lease Tract Location Map
 Mesa, Montrose, and San Miguel Counties**

DATE PREPARED: October 10, 2008
 FILE NAME: Y0010500-02

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The DOE Office of Legacy Management currently manages the Uranium Leasing Program and continues to administer 32 lease tracts, all located within the Uravan Mineral Belt in southwestern Colorado. Thirty-one of these lease tracts are actively held under lease. Administrative duties include the ongoing monitoring and oversight of leaseholders' activities a the annual inspection of these lease tracts to identify and correct safety hazards or other environmental compliance issues.



Program Summary

Current Status

Programmatic Environmental Assessment 

Finding of No Significant Impact 

Uranium Lease Tracts Location Map 

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Program Summary

The Atomic Energy Act and other legislative actions authorized the U.S. Atomic Energy Commission (AEC), predecessor agency to the U.S. Department of Energy (DOE) withdraw lands from the public domain and then lease them to private industry for exploration and for development and mining of uranium and vanadium ore. A total of 1.2 million acres of land in southwestern Colorado, northern New Mexico, and southeastern Utah were withdrawn from the public domain during the late 1940s and early 1950s.

In 1948, AEC included portions of these lands in 48 mineral leases that were negotiated with adjacent mine owners/operators. This early leasing program ended in 1962, more than 1.2 million pounds of uranium and 6.8 million pounds of vanadium were produced, generating \$5.9 million in royalties to the federal government.

A second leasing program was initiated in 1974. The previously withdrawn lands were divided into 44 lease tracts and offered to the domestic uranium industry through a competitive bid process. During the next 20 years, more than 1.7 million tons of uranium were produced from the lease tracts, yielding approximately 6.5 million pounds of uranium and 33.4 million pounds of vanadium and generating \$53 million in royalties to the federal government.

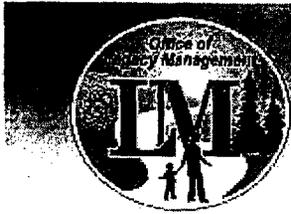
In 1994, all existing leases were allowed to expire to give DOE the opportunity to conduct an Environmental Assessment to determine if the leasing program should continue. Recognizing that the former leaseholders had a vested interest in their lease tracts, DOE authorized the leaseholders to access the lease tracts to maintain existing operations or perform reclamation. The Environmental Assessment was completed and approved in July 1995, and a *Finding of No Significant Impact* was issued in 1995 for the proposed action, which called for the continued leasing of DOE managed lands for the exploration and production of uranium and vanadium ores.

In 1996, DOE re-offered the respective leases to the previous leaseholders. At that time, many former leaseholders opted out of the program, leaving just two leaseholders who chose to continue with their respective, multiple leases.

In 1994, the lands associated with the single lease tract located in New Mexico, that had been fully reclaimed, were restored to the public domain. In 1999, under similar circumstances, the lands associated with the five lease tracts located in Utah were restored to the public domain.

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Current Status

On July 6, 2007, DOE finalized the *Uranium Leasing Program Programmatic Env Assessment (ULP PEA)* and issued a Finding of No Significant Impact (FONSI) for preferred Expanded Program alternative.

In October 2007, Department of Energy initiated the following actions in accordance with the preferred "Expanded Program" alternative as outlined in the ULP PEA and FONSI:

- Redefined the lease tract boundaries to incorporate prior existing unpatented claims that were located within the withdrawal boundaries and subsequently invalidated and reverted back to the withdrawal.
- Reconfigured the number of inactive lease tracts from 25 to 19 by combining the less-favorable lease tracts with other nearby lease tracts to make them attractive to potential bidders.
- Revised the standard lease agreement to incorporate new lease language by DOE to reflect the current environmental arena in which DOE operates royalty calculation methodology, and the new environmental stipulations of the final PEA.
- Developed a comprehensive Web-based inactive lease tract bid-solicitation process, populated it with current and historical information retained by DOE for each inactive lease tract, and then initiated the Web-based solicitation process over 100 potential bidders access to all of the compiled lease tract data.
- Prepared separate and distinct lease agreements for the 13 active lease tracts and the 19 inactive lease tracts.
- Evaluated all bids received during the solicitation process, including supply information submitted by the apparent high bidders, and ultimately determined the successful bidder for each inactive lease tract.

This process culminated in the execution of 31 new 10-year lease agreements. DOE executed 13 new 10-year lease agreements with the existing leaseholders of the lease tracts effective April 30, 2008. Subsequently, DOE executed 18 new 10-year lease agreements with the successful bidders of the inactive lease tracts effective June 1, 2008. One lease tract received no interest during the bid-solicitation process and will remain in inactive status indefinitely. Click here for a **summary of lease tract metrics**.

As the Uranium Leasing Program continues for the next 10 years, DOE will assure that public's health and welfare and the environment are protected. DOE's leaseholders are required to comply with all applicable statutes, rules, and regulations and are required to post reclamation performance bonds with DOE that are sufficient to fund the ultimate reclamation of their respective lease operations.



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Uranium Leasing Program Final Programmatic Environmental Assessment

July 2007



U.S. Department
of Energy

Office of Legacy Management

DOE/EA-1535

**Uranium Leasing Program
Final
Programmatic Environmental Assessment**

July 2007

U.S. Department of Energy Office of Legacy Management

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- Appendix D Responses to Public Comments

Plate

- Plate 1 DOE Uranium Leasing Sites Lease Tract Location Map Mesa, Montrose, and San Miguel Counties

End of current text

Abbreviations and Acronyms

AEC	U.S. Atomic Energy Commission
AQCC	[State of Colorado] Air Quality Control Commission
AUM	animal unit month
BLM	U.S. Bureau of Land Management
CDOT	Colorado Department of Transportation
CDRMS	Colorado Division of Reclamation, Mining, and Safety
CDOW	Colorado Division of Wildlife
CDPHE	Colorado Department of Public Health and Environment
CEQ	Council on Environmental Quality
CFR	<i>Code of Federal Regulations</i>
dB	decibel
dBA	A-weighted sound level
DHV	Design Hour Volume
DOE	U.S. Department of Energy
DOT	U.S. Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ERMA	Extensive Recreation Management Area
FONSI	Finding of No Significant Impact
ft	feet (foot)
Hz	hertz
L _{dn}	day-night sound level
L _{eq}	equivalent sound level
LHDs	load/haul/dumps
LM	Office of Legacy Management
µg/L	micrograms per liter
mg/L	milligrams per liter
mrem/yr	millirem per year
MSHA	Mine Safety and Health Administration
NEPA	National Environmental Policy Act
NESHAPs	National Emission Standards for Hazardous Air Pollutants
NOI	Notice of Intent
NRC	U.S. Nuclear Regulatory Commission
PCA	Potential Conservation Area
pCi/g	picocuries per gram
PSD	Prevention of Significant Deterioration
rem	roentgen equivalent man (a unit of radioactive dose equivalent)
ROW	right-of-way
SHPO	State Historic Preservation Office
SRMA	Special Recreation Management Area
TCP	traditional cultural property
TDS	total dissolved solids
ULMP	Uranium Lease Management Program

ULP Uranium Leasing Program
USACE U.S. Army Corps of Engineers
USFWS U.S. Fish and Wildlife Service
U.S.C. *United States Code*
V/C volume-to-capacity ratio
WSA Wilderness Study Area

Measurements and Conversions

Units of Measurement

Most measurements in this Environmental Assessment are presented in English units. Metric units are used for measurements that are too small to be expressed in English units or with data that were intended to be presented in metric units. The table below presents general mathematical values for conversion between measurement units.

Measurement Conversion Chart

If You Know	Multiply By	To Get	If You Know	Multiply By	To Get
Length					
inches	2.54	centimeters	centimeters	0.3937	inches
feet	0.3048	meters	meters	3.281	feet
miles	1.60934	kilometers	kilometers	0.6214	miles
Area					
square miles	2.589988	square kilometers	square kilometers	0.386102	square miles
Volume					
acre-feet	1,233.48	cubic meters	cubic meters	8.107×10^{-4}	acre-feet
	43,560	cubic feet	cubic feet	2.2957×10^{-5}	acre-feet
	325,850	gallons	gallons	3.0689×10^{-6}	acre-feet
gallons	3.7854	liters	liters	0.26417	gallons
Flow Rate					
gallons per minute	0.003785	cubic meters per minute	cubic meters per minute	264.172	gallons per minute
	0.002228	cubic feet per second	cubic feet per second	448.831	gallons per minute

End of current text

Glossary

Adit—A nearly horizontal passageway leading into a mine.

Animal Unit Month—An animal unit is generally one of the following: one cow, one cow and one calf, one horse, or five sheep. One animal unit month (AUM) is the amount of forage required to support one animal unit for 1 month. The number of acres required for an AUM (expressed as acres per AUM) varies depending on factors such as range condition, rainfall, irrigation, and topography. Because of low rainfall and steep topography, a larger number of acres is required to support an AUM in the area of the lease tracts than on most public lands.

Exposure—The total quantity of radiation at a given point, measured in air. Also, a measure of gamma or x-rays at a certain location, based on the location's ability to produce ionization in air. The unit of exposure for x-rays and gamma radiation is the roentgen.

Effective Dose Equivalent—The sum of the products of absorbed dose and appropriate factors that account for differences in biological tissue damage produced by different kinds of ionizing radiation and its distribution in the body. The unit of effective dose equivalent is the rem.

Gamma Radiation—Short wavelength electromagnetic radiation originating in the nucleus of an atom; similar to x-rays but of higher energy.

Incline/Decline—A passageway leading into a mine and sloping upward or downward at an angle from the horizontal.

Load/Haul/Dumps (LHDs)—Equipment used for moving rock and debris in mines.

Member of the Public—An individual in a controlled or unrestricted area on the lease tracts. The individual would not be involved in mining operations but could be a receiver of radiation doses. Any individual receiving an occupational dose would not be considered a member of the public.

Mine-Waste-Rock Pile—Topographic feature associated with mining operations that contains host rock and naturally occurring radioactive material and usually is not cost effective to process further.

Muck—The loading and removal of ore or mine-waste-rock from a mine.

rem (derived from roentgen equivalent man)—The dosage of radiation that would cause the same biological effect as 1 roentgen of gamma-ray exposure.

Shaft—A near-vertical passageway leading into a mine from the surface of the ground.

Skip—The compartment(s) within a shaft used to transport personnel and/or ore and/or mine-waste-rock to the surface.

Total Effective Dose Equivalent—The sum of the deep-dose equivalent (for external exposure) and the committed effective dose equivalent (for internal exposure).

Vent—A near-vertical passage leading into a mine that provides additional ventilation.

Working Level—Any combination of short-lived radon daughters in 1 liter of air that results in the ultimate emission of 1.3×10^5 million electron volts of potential alpha particle energy.

Working Level Month—An exposure to 1 working level for 170 hours.

Summary

Pursuant to the National Environmental Policy Act (NEPA), the U.S. Department of Energy (DOE) Office of Legacy Management (LM) is evaluating its Uranium Leasing Program to determine a strategy for managing the program during the next 10 years. A key element in this determination is the assessment of environmental impacts attributable to lease tract operations and associated activities. The leasing program currently consists of 38 lease tracts, all located in southwestern Colorado; 13 leases are active and 25 are inactive. The 13 active leases are scheduled to expire in 2007.

DOE is considering three alternatives for managing the lease tracts:

- *Expanded Program alternative* (DOE's preferred alternative). The existing leasing program would be expanded to include leasing of all DOE-managed lands. The 13 active lease tracts (more than 7,000 acres) would remain active, and DOE could offer the 25 inactive lease tracts to the domestic uranium industry through a competitive bid process. Individual lease tracts could be expanded to include all withdrawn lands, potentially more than 27,000 acres.
- *Existing Program alternative*. The existing 13 leases would be extended, and future operations would be limited to those that are currently authorized on the tracts and their subsequent reclamation.
- *No Action alternative*. Current leases would expire, and the existing lease operations would be reclaimed. Following reclamation, DOE could choose to continue (indefinitely) its management of the withdrawn lands without leasing, or all 38 lease tracts could be restored to the public domain with the concurrence of and under the Bureau of Land Management's (BLM's) administrative control and DOE's leasing program would end.

The proposed alternatives would affect the environmental resources discussed in this final Programmatic Environmental Assessment (PEA) to varying degrees. The following discussions present summaries of the impacts to the resources that the alternatives would have the most effect on. Chapter 5 of the PEA presents a more detailed discussion of the effects to all applicable environmental resources.

Socioeconomics

All alternatives would create additional jobs in areas affected by lease tract operations; however, due to the distribution of the lease tracts across three counties, and the population distribution in numerous towns and cities in these and adjoining counties, no community would incur significant positive or negative socioeconomic impacts. The Expanded Program alternative would create the most jobs (up to 570) and would increase local wages. The Existing Program alternative would create fewer jobs (up to 186) and would also produce an increase in local wages. Both alternatives would bring a secondary economic benefit from local spending for goods and services. Up to 60 short-term (1 to 2 year) jobs would result from the No Action alternative, mostly from hauling stockpiled ore to the processing mills and reclaiming disturbed land.

Transportation

Ore could be hauled to two currently licensed ore-processing mills; Cotter Corporation's Mill in Cañon City, Colorado or the International Uranium Corporation's White Mesa Mill near Blanding, Utah. The final PEA analyzed a highly improbable, worst-case transportation scenario which conservatively assumed that all mines on all lease tracts were operating at capacity and concurrently. Additionally, the final PEA also evaluated the potential impacts associated with the haul-truck traffic that can reasonably be expected to occur. This realistic evaluation is based on historic operating conditions that occurred during the last upturn in the uranium market, during which mines opened and closed but under no circumstance did all mines operate simultaneously and at capacity. As summarized below and detailed in the final PEA, there would be no significant impacts on traffic or the health of workers or the public under either transportation scenario. Based on the worst-case transportation scenarios analyzed in the final PEA, an increase in truck traffic (up to 150 haul trucks per day, one way, under the Expanded Program alternative and up to 50 haul trucks per day, one way, under the Existing Program alternative) hauling ore to the mills would result in only a slight increased risk of traffic fatalities. Under worst-case scenarios for all three alternatives, the number of fatal accidents and injury accidents were estimated to be less than 1 per year. For the realistic transportation evaluation, the haul truck traffic would decrease to 45 trucks per day for the Expanded Program alternative and 31 trucks per day for the Existing Program alternative. Annual traffic-related fatal accidents and injury accidents would decrease accordingly, from those mentioned above. There would be no notable additional congestion on highway road segments related to this additional truck traffic. With the exception of one existing road segment in Grand Junction, Colorado, that is virtually at capacity, all other road segments are well below road capacity (expressed as a volume to capacity ratio) and would experience none to minor increases under all alternatives.

Based on the worst-case scenario that was analyzed in the final PEA, under the Expanded Program alternative, the annual dose to haul-truck drivers and members of the public from exposure to radioactive ore would result in an increase in cancer risk of less than 8 in 1 million and 1 in 10 million, respectively. Also based on the worst-case scenario that was analyzed in the final PEA, under the Existing Program alternative, a haul-truck driver would receive the same annual dose and risk as under the Expanded Program alternative, but because of the reduced number of total shipments, the public risk would be reduced to 1 in 100 million.

The increase in haul-truck traffic under the Expanded and Existing Program alternatives would also increase the frequency of noise along the haul routes; however, the noise from haul trucks would be similar to that of other commercial trucks using the same routes and would attenuate within the same short distances. On some routes that are designated as scenic byways, vehicle/animal accidents could increase commensurate with the increased number of haul trucks. In addition, the residents living near the lease tracts or along the collector routes would likely see an increase in the amount of dust generated by the increased haul-truck traffic.

Mining

Under the Expanded and Existing Program alternatives, uranium and vanadium ores would be immediately available, and new reserves might be discovered. Under the No Action alternative, uranium and vanadium ores could be available for extraction over the long term.

Noise, Dust, and Air Quality

The Expanded and Existing Program alternatives would produce a limited increase in localized noise and dust near mine sites and along dirt haul roads, which could affect recreational users, especially near the Dolores River Canyon. An increase in visible dust and surface disturbances would also affect visual resources. Local fugitive dust could decrease air quality slightly near the source areas, but regional air quality would not be affected under either alternative. Under the No Action alternative, noise, dust, and human activity at all lease tracts would decrease because all lease-tract operations would be reclaimed.

Agriculture and Grazing

The Expanded Program alternative would result in surface disturbance of no more than 450 additional acres (in addition to the 300 acres of existing disturbance), and if all leases were in active operation under the Existing Program alternative, an additional 110 acres would be disturbed. This acreage represents less than 2 percent of the total area (27,000 acres) of DOE lease tracts. These small, discontinuous losses in acreage would not significantly affect the volume of forage in grazing allotments that include the lease tracts. Because most mining activities occur in lands not suitable for crops, there would be no impacts to agriculture. However, there would be impacts to range management, such as increased traffic through allotments to mine sites that could include animal/vehicle accidents, disruption of normal livestock trailing/movement from mine development, and damage to or increased maintenance requirements for access roads. These potential impacts could be minimized with range improvements such as cattle guards and fences. After successful reclamation, as many as 300 additional acres could become available for grazing. Weed invasion could potentially affect this forage base, but DOE has a proactive noxious weeds control program that is coordinated with the Montrose County Weed Program and the San Miguel Basin Weed Program.

Soils

Surface disturbance under the Expanded Program and Existing Program alternatives could produce an increase in soil erosion, but storm water runoff management during operations and reclamation of disturbed areas after mining operations ceased would minimize these effects. Reclamation of the existing 300 acres of disturbed areas under the No Action alternative would decrease the potential for soil erosion. New surface-disturbing activities on the lease tracts would require review and approval of DOE and affected agencies, such as the Colorado Division of Wildlife (CDOW), U.S. Fish and Wildlife Service (USFWS), the State Historic Preservation Officer (SHPO), BLM, and the Colorado Division of Reclamation, Mining, and Safety.

Vegetation

Mining operations under the Expanded Program and Existing Program alternatives would disturb no more than an additional 450 acres and 110 acres, respectively, of land containing various amounts of upland vegetation and cryptobiotic soils. All impacts would be to small (5 to 10 acres) isolated acreages. This area of disturbance represents less than 2 percent of the total acreage in DOE's lease program. The remainder would be undisturbed by mining activities. The degree of impact would depend on the areas disturbed. Beneficial impacts may result from successful reclamation of previously degraded or species-poor areas. Negative impacts may

occur in previously diverse, healthy areas or in areas containing sensitive species, although these impacts would be offset by successful reclamation. All disturbed areas would be reclaimed with the concurrence of BLM before being restored to the public domain. After successful reclamation, as many as 300 additional acres could become available for grazing. Weed invasion would be expected to increase in disturbed areas and in areas where vehicle traffic would facilitate the spread of weed seed, particularly before reclamation is successful; however, DOE has a proactive noxious weeds control program.

Wildlife

Of the three alternatives, the Expanded Program alternative would have the most effect on wildlife that inhabits the lease tracts, as up to 450 additional acres of land would be disturbed. The Existing Program alternative would result in less effect (up to 110 additional acres). In disturbed areas, short-term habitat would be lost as a result of vegetation removal, surface disturbance, and blasting on 5 to 10 acres per lease. The remaining lands, several thousand acres, would remain undisturbed, although mining activities (e.g., noise, light, traffic, road kill, disruption of migration routes) would be expected to impact wildlife. Reopening of abandoned mine entrances and other structures could potentially result in disturbance to populations of sensitive species of bats and reptiles but would be conducted in a manner, as directed by DOE, in consultation with BLM, USFWS, and CDOW, that would avoid or minimize such impacts.

Under the No Action alternative, most area wildlife species would benefit over the long and short terms because cessation of operations would reduce or eliminate noise, traffic, and human activity from the lease tracts. Under all three alternatives, permanent mine closures could destroy potential bat habitats; however, the fabrication and installation of bat gates and grates in mine openings could greatly increase the availability of such habitats.

Cultural Resources

Under the Expanded Program alternative, approximately 22 cultural resource sites could be expected to occur within areas of new disturbance. Under the Existing Program alternative, approximately five to six sites could occur within areas of new disturbance. DOE would consult with tribal representatives to determine if any of the inventoried cultural sites were traditional cultural properties. Impacts to historic or cultural resources would be avoided or minimized in consultation with the SHPO, or tribal historic preservation officer as appropriate, to ensure that impacts would not be significant. The No Action alternative would benefit cultural resources, as cultural sites would not be disturbed.

Human Health

Risk estimates of latent cancer fatalities were calculated for the Expanded Program and Existing Program alternatives for a member of the public living near an underground uranium mine, a member of the public living near an open pit uranium mine, and workers receiving an occupational dose. Risk under the No Action alternative was calculated for a member of the public visiting a lease tract and camping for 14 days on a mine-waste-rock pile. For all risk scenarios, estimated latent cancer fatalities were less than 1 for members of the public. For workers at the lease tracts, estimates of latent cancer fatalities were less than 1 for the Existing Program and No Action alternatives. Under the Expanded Program alternative, the risk estimate

is 1 latent cancer fatality for workers, based on 570 workers each receiving an annual radiation dose of 350 millirems during a 10-year period.

This final PEA evaluates the impacts of the proposed alternatives on the environmental resources that currently exist. If any future decisions concerning the lease tracts affect additional environmental resources, DOE would prepare a more detailed NEPA analysis.

**Finding of No Significant Impact
for the
Uranium Leasing Program**

July 2007

U.S. Department of Energy Office of Legacy Management

**U.S. DEPARTMENT OF ENERGY OFFICE OF LEGACY MANAGEMENT
FINDING OF NO SIGNIFICANT IMPACT for the URANIUM LEASING PROGRAM
PROGRAMMATIC ENVIRONMENTAL ASSESSMENT**

Agency: Department of Energy
Action: Finding of No Significant Impact

Summary: In accordance with the National Environmental Policy Act (NEPA) of 1969 (Title 42 *United States Code* [U.S.C.] 4321 et seq.) and the Council on Environmental Quality (CEQ), the U.S. Department of Energy Office of Legacy Management (DOE) prepared the *Uranium Leasing Program Programmatic Environmental Assessment* (PEA) (DOE/EA-1535) to evaluate its management alternatives for the future of DOE's Uranium Leasing Program (ULP). The ULP administers 38 lease tracts that encompass 27,000 acres of DOE-controlled lands located in southwestern Colorado for the exploration, development, and extraction of uranium and vanadium ores. The alternatives evaluated included continuation of the program at existing leasing levels, expanding the program to include all uranium lands under DOE's management, or discontinuing the program.

In finalizing the PEA, DOE reviewed and considered all comments received on the draft document during the public review process. Comments from over 100 individuals and organizations were summarized and responded to in Appendix D of the final PEA. In response to those comments, the final PEA was expanded to include: (1) clarification of the purpose, need, and scope of the PEA; (2) a more realistic ore production and transportation evaluation that depicts the amount of traffic that the public would likely see or encounter from the expanded leasing program; (3) a discussion of the potential effects of an ore haul-truck accident that spills the ore into a surface water course; and (4) additional lease stipulations that will be incorporated into future lease documents to address specific critical issues, including collaboration with other Federal, State, and local agencies to identify, assess, and implement actions to lessen local traffic impacts.

Based on the final PEA and in consideration of all comments, DOE has decided to proceed with the preferred "Expanded Program" alternative. Under this alternative, DOE will continue the Uranium Leasing Program, extending the 13 existing leases for a ten-year period, and offering additional leases (up to 25 lease tracts) to the domestic uranium industry for the same ten-year period. The decision provides comprehensive protection of human health and the environment as all Federal, State, and local requirements must be met and lease restrictions enhance these already established laws and procedures. Additionally, mining royalties will provide revenue to the Federal government.

To put this Expanded Program alternative into perspective in today's world market, production from the DOE lease tracts could approach 2.0 million pounds of uranium annually in a world market that produces approximately 100 million pounds of uranium annually and consumes nearly twice that amount annually.

On the basis of the information and analyses presented in the final PEA, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, as defined by NEPA. Therefore, preparation of an environmental impact statement is not required for the ULP and DOE is issuing this Finding of No Significant Impact (FONSI).

SUPPLEMENTARY INFORMATION:

Background

In the post-World War II era, Congress directed DOE's predecessor agency, the U.S. Atomic Energy Commission (AEC), to develop a supply of domestic uranium that would adequately meet the nation's defense needs. That responsibility was met through the Ore Purchase Program, the Exploration Program, and the Mineral Leasing Program. Provisions of these programs gave AEC the authority to withdraw Federal lands for the exploration and development of a viable domestic uranium source and were carried forward into the Atomic Energy Act of 1954.

In March 1948, the U.S. Department of Interior—Bureau of Land Management (BLM) issued Public Land Order (PLO) 459 that stated "Subject to valid existing rights and existing withdrawals, the public lands and the minerals reserved to the United States in the patented lands in the following areas in Colorado are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws, and reserved for the use of the United States Atomic Energy Commission." Subsequently, BLM issued a number of other PLOs (all similar to PLO 459) that increased and/or decreased the total acreages in withdrawn status. In addition, the U.S. Government, through the Unions Mines Development Corporation, acquired a substantial number of patented and unpatented mining claims, millsites, tunnel sites, and agricultural patents in February 1949, until the aggregate acreage managed by AEC totaled approximately 25,000 acres. During this time, AEC's management authority was quite broad.

The Mineral Leasing Program (circa 1949–1962) produced more than 1.2 million pounds of uranium and 6.8 million pounds of vanadium and generated \$5.9 million in royalties to the Federal government. When the program ended in 1962, AEC directed the leaseholders to close the mines, but little was done to reclaim the mine sites.

In 1974, AEC initiated a second leasing program under the Domestic Uranium Program regulations (Title 10 *Code of Federal Regulations* [CFR] Part 760.1) that was markedly different from the previous leasing program. The new program, the Uranium Lease Management Program (ULMP), was designed to address the lack of production capacity of uranium- and vanadium-bearing ores for U.S. Government defense needs and emphasized the need for uranium in the expanding commercial nuclear energy market. Two main goals of the ULMP were to recover the resources that had been developed initially by AEC and to improve the prospects for continued mill operations, thereby encouraging further exploration and development on privately held land. In preparation for the ULMP, AEC prepared the *Environmental Statement, Leasing of AEC Controlled Uranium Bearing Lands* (AEC 1972) that presented assessments of the various environmental and economic aspects of the leasing program. That document recognized the multiple-use aspects of the public lands, including those managed by AEC and deferred the authority for multiple-use activities to BLM. The document also acknowledged that the lands

associated with the lease tracts accounted for less than 5 percent of the acreage within the Uravan Mineral Belt that would likely have exploration and mining activities. The bulk of those activities were expected to occur on other public lands associated with new or existing mining claims (556,000 acres) and other private and state lands (21,000 acres). Accordingly, the level of activities expected to occur on other lands was identified as independent of AEC's leasing program.

AEC and its successor agencies, the U.S. Energy Research and Development Administration and DOE, administered the ULMP. Forty-four lease tracts (38 in Colorado, 5 in Utah, and 1 in New Mexico) were included in the program. In 1974, 43 lease tracts were offered for lease through a competitive bid process; 1 lease tract (located in Utah) was excluded from the leasing process in 1974 and was never leased. The 38 lease tracts in Colorado are located in an area known as the Uravan Mineral Belt, which at that time included a significant, if not dominant, portion of the known domestic uranium ore reserves.

During the ULMP, DOE controlled and administered the 43 lease tracts for the exploration and development of viable uranium and vanadium resources. As part of its administrative duties, DOE incorporated language into each lease agreement that required leaseholders to conduct operations in a manner to minimize adverse environmental effects and to comply with all applicable Federal, State, and local statutes and regulations. DOE was responsible for monitoring lease tract activities and enforcing the lease agreements. Non-compliance could result in lease termination. To ensure that lease sites were adequately reclaimed, DOE required the leaseholders to secure a reclamation performance bond for each lease tract, payable to DOE upon default. These bonds were adjusted periodically to reflect the actual conditions present at the leaseholders' lease tract operations.

Between 1974 and 1994, the ULMP leaseholders produced approximately 6.5 million pounds of uranium and 33.4 million pounds of vanadium. That production generated \$53 million in royalties to the Federal government. To put the ULMP in proper perspective, domestic annual uranium production peaked in 1980 at 43.7 million pounds, of which production from the DOE lease tracts (at 1.1 million pounds) represented about 2.5 percent of the total.

Prior to 1994, 13 of the 43 lease tracts were fully reclaimed and relinquished back to DOE. In 1994, the remaining 30 leases were allowed to expire, and DOE prepared a programmatic environmental assessment (EA) to determine if the leasing program should continue. During the EA process, the former leaseholders were allowed to continue maintenance, security, and reclamation activities at the lease tracts to ensure that the mines and associated facilities did not incur damage. Eight of the 30 leaseholders notified DOE that they did not want to continue with the program and subsequently reclaimed their respective lease tracts and relinquished them back to DOE. Accordingly, the 1994 programmatic EA focused on the ultimate disposition of only 22 lease tracts and the 21 reclaimed lease tracts were excluded indefinitely from further leasing activities. DOE's preferred alternative in the EA was the continued leasing of these 22 lease tracts for an additional 10-year period. The *Final Programmatic Environmental Assessment for the Uranium Lease Management Program* (DOE 1995) was approved in July 1995, and DOE issued a Finding of No Significant Impact (FONSI).

Subsequent to the FONSI, DOE prepared new lease agreements and entered into negotiations with the previous leaseholders. Seven of the 22 leaseholders ultimately declined these negotiations, reclaimed their respective operations and relinquished their lease tracts back to DOE. Following negotiations, new ten-year lease agreements were executed for 15 lease tracts. This current leasing program is identified as the DOE ULP. Ore production on the active lease tracts resumed in May 2003 and continued into early November 2005, when production operations at the four mines were suspended. During that time, approximately 65,500 tons of ore was produced from these lease tract mines, generating \$4.0 million in royalties to the Federal government. Similar mining operations were being developed on three other lease tracts and, pending the resumption of operations, they could be in production within 6 months. If such levels of production continue into the foreseeable future, and the market prices for uranium and vanadium continue at or near current levels, it is anticipated that royalties generated from the existing program could total \$10 million annually. Two of the 15 lease tracts have been reclaimed and relinquished back to DOE. Currently, 13 lease tracts are still active and 25 lease tracts are inactive; all are located in southwestern Colorado.

In October 1994, DOE initiated a legacy mine-site reclamation program. Each lease tract was thoroughly inspected to identify all the abandoned mine sites that resulted from pre-1974 leasing activities. All mining-related features associated with each site were quantified and assessed for their historic importance. In 1995, in the absence of specific guidance pursuant to the reclamation of abandoned uranium mine sites, DOE initiated discussions with BLM officials (state and local) that culminated in the establishment of a guidance document, *United States Department of Interior, Colorado Bureau of Land Management, Closure/Reclamation Guidelines for Abandoned Uranium Mine Sites*. DOE's objective in establishing this guidance document was to ensure that DOE's lease tracts were reclaimed in a manner that was acceptable to BLM so that the lands could ultimately be restored to the public domain under BLM's jurisdictional authority. Subsequently, DOE systematically reclaimed its legacy mine sites, consistently applying, and in many cases exceeding, the objective set forth in the aforementioned guidance document. In May 2001, DOE reclaimed its final legacy mine site. In summary, DOE reclaimed a total of 161 separate mine sites on 22 lease tracts at a total cost of \$1.25 million.

Purpose and Need

In support of the Energy Policy Act of 2005 (Public Law 109-58), which emphasizes the reestablishment of nuclear power (Sections 601 through 657), DOE-LM evaluated the ULP to determine whether to continue leasing some or all of DOE's withdrawn lands and government-owned patented claims (referred to as DOE-managed lands) for the exploration and production of uranium and vanadium ores for up to 10 more years. Current leases are scheduled to expire later this year.

Proposed Actions

The final PEA addressed the potential environmental concerns related to a policy decision that DOE is considering for the ULP. The three alternatives considered in the final PEA are the Expanded Program alternative, the Existing Program alternative, and the No Action alternative.

Under the Expanded Program alternative, the existing leasing program will be expanded to include the leasing of all DOE-managed lands. This alternative is DOE's preferred alternative in the final PEA and will be implemented based on this FONSI. Operations on the 13 active lease tracts will continue as they are presently authorized, and DOE will offer up to 25 inactive lease tracts to the domestic uranium industry through a competitive bid process. Also, individual lease tracts could be expanded to include all withdrawn lands. The new lease agreements will require the leaseholders to comply with all applicable statutes and regulations and will allow the leaseholders to (1) conduct operations consistent with the exploration, development, and extraction (mining/production) of uranium and associated minerals; (2) transport ores from the lease tracts to ore-processing facilities; and (3) perform all activities required to satisfactorily reclaim the environmental disturbances on the lease tracts resulting from their operations.

Under the Existing Program alternative, the existing 13 leases would be extended, and future lease activities would be limited to operations that are presently authorized on those lease tracts and their subsequent reclamation. In addition, DOE would retain the 25 inactive lease tracts in their current status until all DOE managed lands could be restored to the public domain with the concurrence of and under BLM's administrative control.

Under the No Action alternative, the current leases would expire, and the existing lease operations would be reclaimed. Following reclamation, DOE could choose to continue (indefinitely) its management of the withdrawn lands without leasing, or all 38 lease tracts would be restored to the public domain with the concurrence of and under BLM's administrative control, and DOE's leasing program would end.

Environmental Impacts

Socioeconomics

All alternatives would create additional jobs in areas affected by lease tract operations; however, due to the distribution of the lease tracts across three counties, and the population distribution in numerous towns and cities in these and adjoining counties, no community would incur significant positive or negative socioeconomic impacts. The Expanded Program alternative would create the most jobs (up to 570) and would increase local wages. The Existing Program alternative would create fewer jobs (up to 186) and would also produce an increase in local wages. Both alternatives would bring a secondary economic benefit from local spending for goods and services. Up to 60 short-term (1 to 2 year) jobs would result from the No Action alternative, primarily from hauling stockpiled ore to the processing mills and reclaiming disturbed land.

Transportation

Ore could be hauled to two currently licensed ore-processing mills; Cotter Corporation's Mill in Cañon City, Colorado or International Uranium Corporation's White Mesa Mill near Blanding, Utah. The final PEA analyzed a highly improbable but "worst case" scenario which conservatively assumed that all mines on all lease tracts were operating at capacity and concurrently. DOE also evaluated the potential impacts associated with the haul-truck traffic that can reasonably be expected to occur. This realistic evaluation is based on historic operating conditions that occurred during the last upturn in the uranium market; during which mines

opened and closed but under no circumstance did all mines operate simultaneously and at capacity. As summarized below and detailed in the final PEA, there would be no significant impacts on traffic or the health of workers or the public.

Based on the worst-case transportation scenarios analyzed in the final PEA, an increase in truck traffic (up to 150 haul trucks per day, one way, under the Expanded Program alternative and up to 50 haul trucks per day, one way, under the Existing Program alternative) hauling ore to the mills would result in only a slight increased risk of traffic fatalities. Under worst-case scenarios for all three alternatives, the number of fatal accidents and injury accidents were each estimated to be less than 1 per year. For the realistic transportation evaluation, the haul truck traffic would decrease to 45 trucks per day for the Expanded Program alternative and 31 trucks per day for the Existing Program alternative. Annual traffic-related fatal accidents and injury accidents would decrease accordingly, from those mentioned above. There would be no notable additional congestion on highway road segments related to this additional truck traffic; all road segments are well below road capacity (expressed as a volume to capacity ratio) and would experience either no traffic increases or only minor traffic increases under all three alternatives.

Based on the worst-case transportation scenario that was analyzed in the final PEA, under the Expanded Program alternative, the annual dose to haul-truck drivers and members of the public from exposure to radioactive ore would result in an increase in cancer risk of less than 8 in 1 million and 1 in 10 million, respectively. Under the Existing Program alternative, the annual dose and associated cancer risk to haul-truck drivers would remain the same as that for the Expanded Program alternative described above, but because of the reduced number of total shipments, the public risk would be reduced to 1 in 100 million.

The increase in haul-truck traffic under the Expanded and Existing Program alternatives would also increase the frequency of noise along the haul routes; however, the noise from haul trucks would be similar to that of other commercial trucks using the same routes and would attenuate within the same short distances. On some routes that are designated as scenic byways, vehicle/animal accidents could increase commensurate with the increased number of haul trucks, but the increases on these routes would not be significant. In addition, the residents living near the lease tracts or along the collector routes would likely see an increase in the amount of dust generated by the increased haul-truck traffic.

Mining

Under the Expanded and Existing Program alternatives, uranium and vanadium ores would be immediately available, and new reserves might be discovered. Under the No Action alternative, uranium and vanadium ores would continue to be available over the long term but would not originate from DOE leases.

Noise, Dust, and Air Quality

The Expanded and Existing Program alternatives would produce a limited increase in localized noise and dust near mine sites and along dirt haul roads, which could affect recreational users, especially near the Dolores River Canyon. An increase in visible dust and surface disturbances would also affect visual resources. Local fugitive dust could decrease air quality slightly near the source areas, but regional air quality would not be affected under either alternative.

Under the No Action alternative, noise, dust, and human activity at all lease tracts would decrease because all lease-tract operations would be reclaimed.

Agriculture and Grazing

The Expanded Program alternative would result in surface disturbance of no more than 450 additional acres (in addition to the 300 acres of existing disturbance), and, if all leases were in active operation under the Existing Program alternative, an additional 110 acres would be disturbed. This acreage represents less than 2 percent of the total area (27,000 acres) under DOE lease tracts. These small, discontinuous losses in acreage would not significantly affect the volume of forage in grazing allotments that include the lease tracts. Because most mining activities occur in lands not suitable for crops, there would be no impacts to agriculture. Impacts to range management, such as increased traffic through allotments to mine sites that could include animal/vehicle accidents, disruption of normal livestock trailing/movement from mine development, and damage to or increased maintenance requirements for access roads would be minimal. After successful reclamation, as many as 300 additional acres would become available for multiple use.

Soils

Surface disturbance under the Expanded Program and Existing Program alternatives could produce an increase in soil erosion, but storm water runoff management during operations and reclamation of disturbed areas after mining operations ceased would minimize these impacts. Reclamation of the existing 300 acres of disturbed areas under the No Action alternative would decrease the potential for soil erosion. New surface-disturbing activities on the lease tracts would require review and approval of DOE and affected agencies, such as the Colorado Division of Wildlife (CDOW), U.S. Fish and Wildlife Service (USFWS), the State Historic Preservation Officer (SHPO), BLM, and the Colorado Division of Reclamation, Mining, and Safety.

Vegetation

Mining operations under the Expanded Program and Existing Program alternatives would disturb no more than an additional 450 acres and 110 acres, respectively, of land containing various amounts of upland vegetation and cryptobiotic soils. All impacts would be to small (5 to 25 acres) isolated acreages, representing less than 2 percent of the total acreage in DOE's lease program. The remainder would be undisturbed by mining activities. The degree of impact would depend on the areas disturbed. Beneficial impacts may result from successful reclamation of previously degraded or species-poor areas. Minimal impacts that may occur in previously diverse, healthy areas or in areas containing sensitive species would be offset by successful reclamation. All disturbed areas would be reclaimed with the concurrence of BLM before being restored to the public domain. After successful reclamation, as many as 300 additional acres would become available for multiple use.

Wildlife

Of the three alternatives, the Expanded Program alternative would have the most effect on wildlife that inhabits the lease tracts, as up to 450 additional acres of land would be disturbed. The Existing Program alternative would result in less effect (up to 110 additional acres). In

disturbed areas, short-term habitat would be lost as a result of vegetation removal, surface disturbance, and blasting on 5 to 25 acres per lease. The remaining lands, several thousand acres, would remain undisturbed, although mining activities would be expected to impact wildlife (e.g., noise, light, traffic, road kill, and disruption of migration routes). Reopening of abandoned mine entrances and other structures could potentially result in disturbance to populations of sensitive species of bats and reptiles but would be conducted in a manner, as directed by DOE in consultation with BLM, USFWS, and CDOW, that would avoid or minimize such impacts.

Under the No Action alternative, most area wildlife species would benefit over the long and short terms because cessation of operations would reduce or eliminate noise, traffic, and human activity from the lease tracts. Under all three alternatives, permanent mine closures could destroy potential bat habitats; conversely, however, the fabrication and installation of bat gates and grates in mine openings could greatly increase the availability of such habitats.

Cultural Resources

Under the Expanded Program alternative, approximately 22 cultural resource sites could be expected to occur within areas of new disturbance. Under the Existing Program alternative, approximately five to six sites could occur within areas of new disturbance. DOE would consult with tribal representatives to determine if any of the inventoried cultural sites were traditional cultural properties. Impacts to historic or cultural resources would be avoided or appropriate actions would be taken in consultation with the SHPO or the Tribal Historic Preservation Officer to assure that impacts would not be significant. The No Action alternative would benefit cultural resources, as cultural sites would not be disturbed.

Human Health

Risk estimates of latent cancer fatalities were calculated for the Expanded Program and Existing Program alternatives for a member of the public living near an underground uranium mine, a member of the public living near an open pit uranium mine, and workers receiving an occupational dose. Risk under the No Action alternative was calculated for a member of the public visiting a lease tract and camping for 14 days on a mine-waste-rock pile. For all risk scenarios, estimated latent cancer fatalities were less than one for members of the public. For workers at the lease tracts, estimates of latent cancer fatalities were less than one for the Existing Program and No Action alternatives. Under the Expanded Program alternative, the risk estimate is one latent cancer fatality for workers, based on 570 workers each receiving an annual radiation dose of 350 millirems during a 10-year period.

Cumulative

DOE assessed cumulative impacts in the context of other existing actions, or reasonably foreseeable future actions that are occurring or might occur within the region of impact during the 10-year duration of DOE's proposed actions. Because the geographic region is remote and sparsely populated, mineral (mining, oil and gas) exploration, development, and production activities are the most likely actions that would continue (or be undertaken) in the region, in the reasonably foreseeable future, that would result in cumulative effects when combined with DOE's proposed ULP alternatives.

BLM data indicate that the three counties encompassing DOE's lease tracts currently have over 4,800 valid uranium claims; most of them recently staked in the last year or two. However, quantitative information on the operational status of these claims is not currently available and would likely be changing as favorable market conditions continue. Based on the past history of mining claims versus actual production (i.e., there are far more valid mining claims than mines in production) the number of these claims that might ultimately be put into production is too uncertain to estimate. Any future mining operations would result in increased numbers of employees, which would increase spending within the region but would also put an increased demand on housing and infrastructure of the small communities in the region. Such operations would also increase in the number of workers commuting to work and the number of haul trucks transporting ore to processing facilities. Future uranium mine production within the region could outpace the capacity of the two existing mills and ultimately result in the construction of new milling facilities.

In addition to mining activities, there is also ongoing development of oil and gas reserves in the region. The extent of future development is unknown; however, currently six to ten drill rigs are often operating at one time in the region of DOE's uranium lease tracts. Because (1) oil and gas exploration and development does not require large numbers of workers (less than 20 per drill rig); (2) the duration of their actions at an individual site is typically a matter of weeks and not years; and (3) pipeline transport is favored over truck; the increase in the workforce and the subsequent cumulative impacts on the regional infrastructure, socioeconomics, and truck traffic resulting from mining and oil and gas development would not be appreciably greater than those assessed under the Expanded Program alternative in the final PEA. Oil and gas development would result in additional land use and biological impacts in the region; however, as with uranium mining, oil and gas drill rig impacts are limited to the localized area of a drill pad (5–10 acres), which would be dispersed throughout the region. Additional linear impacts to land use might occur if additional access roads and transmission pipelines are developed. The cumulative effects on land use and biota in the region would be an increase in the acreage of public lands that would be affected by mineral exploration. However, based on the relatively small footprint of oil and gas development operations, such an increase would likely be in the hundreds and not thousands of acres scattered across the region.

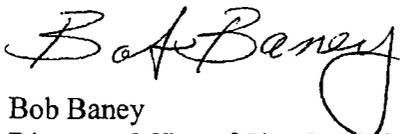
DOE would monitor future minerals development activities (uranium exploration and mining and oil and gas development) within the region that could lead to increased traffic impacts. DOE would work with the appropriate Federal, State, county, and local agencies to develop traffic studies as required and implement site-specific measures, such as acceleration/deceleration lanes, intersection controls, passing lanes, and other measures, that would reduce or minimize traffic impacts within the region.

Determination: Based on the analyses in the final PEA, I have determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an environmental impact statement is not required.

Information: Copies of the final PEA and FONSI are available at the DOE-LM website at: http://www.lm.doe.gov/land/sites/uranium_leasing/uranium_leasing.htm.

Hard copies (paper or CD) of the document(s) can be requested by calling 1-800-399-5618, by sending an email to ulcomments@gjo.doe.gov, or writing Ms. Tracy Plessinger, DOE-LM, U.S. Department of Energy, Office of Legacy Management, 2597 B³/₄ Road, Grand Junction, CO, 81503.

Issued at Washington, D.C. on this 5th day of July 2007.



Bob Baney
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Office of Legacy Management
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