

# United States Senate

WASHINGTON, DC 20510

October 24, 2013

The Honorable Allison M. Macfarlane  
Chairman, U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Macfarlane:

We write to urge the Nuclear Regulatory Commission (NRC) to comply expeditiously with the writ of mandamus issued by the U.S. Court of Appeals for the D.C. Circuit in the case styled *In re Aiken County*, No. 11-1271. As explained in this letter, we strongly believe the NRC's efforts in response to the writ of mandamus should focus on completion of the Safety Evaluation Reports ("SERs") for the Yucca Mountain facility.

We received a letter dated September 13, 2013, from Mr. J. E. Dyer, the NRC's Chief Financial Officer, recognizing that the D.C. Circuit has "directed the Nuclear Regulatory Commission to *promptly* continue with the licensing process associated with the Yucca Mountain, Nevada high-level waste repository." Mr. Dyer's letter explains that the NRC has "commenced utilizing prior year unobligated balances appropriated from the Nuclear Waste Fund to continue with the [Yucca] licensing process." The letter confirms that there are \$11.1 million of unobligated funds available for this purpose, along with \$2.5 million of obligated, unexpended funds.

In addition, we have received your letter dated October 23, 2013, providing a copy of the NRC's first monthly status report concerning compliance with the D.C. Circuit ruling and explaining that the NRC "will deliberate and determine the various activities that might compose the agency's response to the court's decision." We note that your letter identifies "completion of the Safety Evaluation Report" at the top of the list of those activities that may occur.

Moreover, in a letter dated August 23, 2013, House Energy & Commerce Committee Chairman Fred Upton and House Environment & Energy Subcommittee Chairman John Shimkus stated that "the NRC's first action to implement the Court's decision will be to diligently resume its review of the license application, complete the [Safety Report], and issue it publicly... NRC's objective, scientific findings regarding the safety of Yucca Mountain would provide the public an independent, authoritative assessment of this important project."

We agree with Chairman Upton and Subcommittee Chairman Shimkus that the available NRC funds should be used to complete the SERs that were started, but not completed, prior to the Commission halting its review of the Department of Energy's ("DOE") license application. As the NRC has recognized, completion of the SERs is an important and logical next step in the NRC's consideration of DOE's license application for Yucca Mountain. The NRC has already stated that "[a]ny NRC decision on whether to authorize construction of a geologic repository for high-level radioactive waste (HLW) disposal at Yucca Mountain, Nevada, will be made only after the NRC staff has completed all volumes of the SER." NUREG 1949, Vol. 1. The NRC has also noted that "[f]ew non-NEPA contentions can be adjudicated before relevant portions of the SER are issued." *In re U.S. Dep't of Energy*, ASLBP No. 09-892-HLW-CAB04 (July 21, 2009).

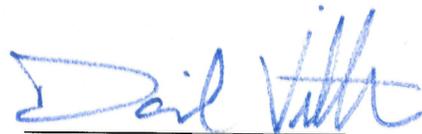
Proceeding with the SERs is consistent with the D.C. Circuit's mandate and the Nuclear Waste Policy Act, and would evidence the NRC's commitment to study and evaluate a safe, permanent repository for this country's nuclear waste. Thus, it seems clear that the next step in this legally mandated licensing process is for the NRC to complete the SERs. We urge the NRC to proceed promptly toward that end.

Thank you for your kind attention to this matter.

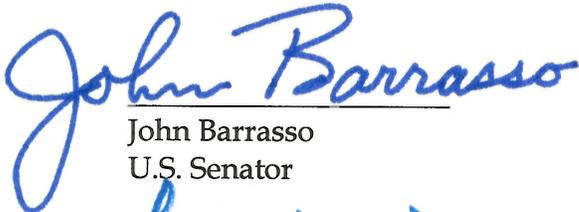
Sincerely,



Jeff Sessions  
U.S. Senator



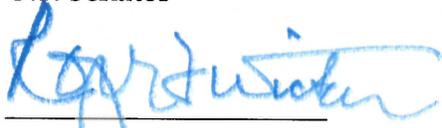
David Vitter  
U.S. Senator



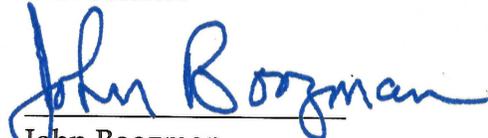
John Barrasso  
U.S. Senator



Mike Crapo  
U.S. Senator



Roger Wicker  
U.S. Senator



John Boozman  
U.S. Senator

cc: The Honorable Kristine L. Svinicki, Commissioner  
The Honorable George Apostolakis, Commissioner  
The Honorable William D. Magwood, IV, Commissioner  
The Honorable William C. Ostendorff, Commissioner