



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
2300 Clarendon Boulevard, Suite 1300
Arlington, VA 22201

October 1, 2008

Mr. Edward F. Sproat III
Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Sproat:

The Nuclear Waste Technical Review Board has received your September 18, 2008, letter concerning the Board's observations and comments on the May 29, 2008, Board meeting. It is unfortunate that the Department of Energy (DOE) feels that it is so constrained by its involvement in an adjudicatory regulatory proceeding that it "does not intend to formally respond to issues regarding the [license application] LA raised by the NWTRB or others outside the context of the NRC licensing proceeding."

In establishing the Board, Congress directed it to provide ongoing peer review of the technical and scientific validity of DOE decisions and to provide advice to Congress on whether DOE activities have a solid technical and scientific foundation. In particular, Section 503 of the Nuclear Waste Policy Amendments Act (NWPAA) instructs the Board to "evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy" after the passage of that Act.¹ The legislative history related to the NWPAA speaks to the scope of the Board's mandate. The House *Report* on the bill, for example, states that the NWPAA gives "the Board broad latitude to examine activities undertaken by the Secretary of Energy to implement the Nuclear Waste Policy Act."² In floor debate, Representative Philip Sharp, who introduced language creating the Board, observed that the Board "will have full authority to review the technical and scientific validity of all [the Secretary's] activities."³ By authorizing the Board to remain in existence "no later than one year after the date" when disposal of radioactive waste in a repository begins, it can be inferred that Congress intended that the Board should continue its broad technical and scientific peer review throughout the licensing period.⁴

Although there may be issues that overlap with those raised in the Nuclear Regulatory Commission's adjudicatory proceeding, the two agencies, as you know, have very different responsibilities. Given its broader mandate, the Board provides oversight on numerous issues

¹ 42 USC 10263.

² House Report on 100-425, page 27.

³ 133 *Congressional Record* H11975.

⁴ 42 USC 10270.

not part of the regulatory process. Importantly, DOE's obligations to the Board do not change as a result of DOE's submission of a License Application to the NRC.

The Board's responsibilities under the law require it to continue its evaluation of the technical and scientific validity of the *full range of activities* undertaken by the Secretary of Energy to implement the Nuclear Waste Policy Act and its Amendments. The Board intends to continue to hold public meetings and fact-finding inquiries to gather information from DOE and others that will enable the Board to meet its obligations to Congress and to the Secretary. The Board expects DOE to engage candidly and productively with the Board on technical issues so that both our agencies can fulfill our responsibilities under the law.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. John Garrick', with a long horizontal stroke extending to the right.

B. John Garrick
Chairman