STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

February 27, 2015

The Honorable Dr. Ernest J. Moniz, Secretary
United States Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

RE: Waiver Request for Research Spent Fuel Projects

Dear Secretary Moniz:

On December 31, 2014, you sent a letter addressed to Governor C.L. "Butch" Otter requesting "an indication of support from the State of Idaho for two research projects involving receipt at the Idaho National Laboratory (INL) of spent nuclear fuel (SNF)." This request was necessitated by the fact that paragraph D.2.e of the 1995 Settlement Agreement expressly prohibits the Department of Energy (DOE) from shipping commercial spent fuel to INL.

On January 8, 2015, Governor Otter and I sent you a letter expressing conditional support for commercial spent fuel research at INL. That letter, however, noted that the 2011 Memorandum of Agreement, providing a limited waiver for receipt of commercial spent fuel at INL, was not operative because of DOE's noncompliance with the 1995 Settlement Agreement. The letter made clear that "any conditional waiver of section D.2.e" would be determined on a case-by-case basis. The letter further stated any conditional waiver would be contingent upon reaching agreement "upon an enforceable commitment and timeframe for timely resolving the 1995 Settlement Agreement noncompliance issues."

The support I expressed in the January 8, 2015 letter arose in the context of a January 6, 2015 meeting I had with Dr. Pete Lyons, Assistant Secretary of Nuclear Energy; Mark Whitney, Principal Deputy Assistant Secretary for Environment and Management; and other DOE staff. In that meeting, I advised your representatives I would not agree to the granting of a conditional waiver of paragraph D.2.e for the receipt of any commercial spent fuel at INL, until such time as the Integrated Waste Treatment Unit is operational and DOE has entered into an enforceable commitment to resolve the 1995 Settlement Agreement noncompliance issues. Further, I told your representatives that if DOE took title to the commercial spent fuel rods described in your letter, it did so at its own risk.

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I was informed by your representatives that they anticipated the Integrated Waste Treatment Unit could be operational before December 31, 2015. Based upon that representation, I indicated that I would consider granting a conditional waiver for the proposed shipment from the North Anna Power Plant, provided the Integrated Waste Treatment Unit was operational before December 31, 2015 and DOE had entered into an enforceable agreement to resolve the 1995 Settlement Agreement noncompliance issues. I also advised your representatives that, based upon the information provided, I was not inclined to support a conditional waiver for the Byron Nuclear Generating Station or Three Mile Island project.

I have taken the time to memorialize these discussions because I recently learned from the Idaho Department of Environmental Quality that DOE representatives have indicated the Integrated Waste Treatment Unit may not be operational prior to the end of 2015. Indeed, my understanding is that DOE has represented that the deadline to be proposed for initiation of waste treatment in the Integrated Waste Treatment Unit will likely be the spring of 2016.

By this letter I am again advising DOE that I will not consider granting a conditional waiver for the North Anna Power Plant spent fuel shipment until such time as the Integrated Waste Treatment Unit is operational and DOE has entered into an enforceable commitment to resolve the 1995 Settlement Agreement noncompliance issues. Further, by this letter, I am again notifying DOE that if it takes title to spent fuel rods from either the Byron Nuclear Generating Station or Three Mile Island in March, DOE does so at its own risk. Again, I am not willing to consider any conditional waiver of section D.2.e for Byron Nuclear Generating Station or Three Mile Island or any other commercial spent fuel shipments to INL, until such time as the Integrated Waste Treatment Unit is operational and DOE has entered into an enforceable commitment to resolve the 1995 Settlement Agreement noncompliance issues.

While I remain a strong supporter of the research mission at INL, DOE must demonstrate its commitment to the 1995 Settlement Agreement as a condition to moving forward with the research mission.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

LGW:cs:jc

C: The Honorable C. L. "Butch" Otter
Curt Fransen, Idaho DEQ
Dr. Peter Lyons, DOE
Mark Whitney, DOE