Department of Energy

Washington, DC 20585

September 22, 2015

CONFIDENTIAL

By electronic mail and USPS

The Honorable Lawrence G. Wasden
Attorney General
State of Idaho
700 W. Jefferson Street, Suite 210
Boise, ID 83720-8071

Dear Attorney General Wasden:

I am in receipt of your letter of August 14, 2015 to John Kotek, Acting Assistant Secretary for Nuclear Energy. As you note, you and representatives of the Department of Energy have been engaged in communications over a period of months regarding proposed shipments of small quantities of commercial spent nuclear fuel to the Idaho National Lab (INL). As you know, these shipments would consist of one shipment of approximately 50 kilograms of heavy metal from the North Anna Nuclear Power Station, and another of the same quantity from the Byron Nuclear Power Station, for research purposes at INL. Mr. Kotek has on a number of occasions offered to explore the potential of removing certain radioactive materials of equivalent quantities from INL.

Your letter of August 14 proposes to grant a waiver of the suspension of spent fuel shipments to INL—which the Department had understood from the letter of January 8, 2015 from you and Governor Otter would be allowed—only if the Department meets a number of additional conditions, including among others the sustained operation of the Integrated Waste Treatment Unit. Some of these conditions would subject the Department to daily monetary penalties, and some fail to acknowledge constraints imposed on federal agencies by the Anti-Deficiency Act. As Mr. Kotek has previously indicated, additional conditions cannot form the basis of a reasonable accommodation. Nor are additional conditions consistent with the expectations of representatives of the Department following meetings with Idaho's Department of Environmental Quality that lead to the March signing of the Notice of Non-Compliance Consent Order.

The Department remains prepared, however, to offset completely the small amounts of spent fuel proposed to be shipped, by removing at least equal quantities of radioactive materials from INL.

As we have previously indicated, the Department must make alternative plans for the first spent fuel shipment this fall. While we continue to prefer to utilize the assets at INL and for the laboratory to benefit from this important research, we must begin the process of shipping it elsewhere on October 9, 2015, unless we can reach final written agreement on

a waiver by that date. I am hopeful that such an agreement can be reached between the Department and the State of Idaho, and I would welcome further discussion if there is an opportunity for agreement.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me at (202) 586-5281.

Sincerely,

Steven P. Croley
General Counsel