

Timeline 2010

February 1,2010	The Administration's Fiscal Year 2011 Budget was announced and stated that in 2010, the DOE will discontinue its applications to the Nuclear Regulatory Commission (NRC) for a license to construct a high-level waste geological repository at Yucca Mountain, Nevada. <u>Budget of the U.S. Government, Fiscal Year 2011: Terminations, Reductions, and Savings, at 62 (Feb. 1, 2010)</u> . The budget further states that "all funding for development of the Yucca Mountain facility will be eliminated" for fiscal year 2011. DOE remains committed, however, to fulfilling its obligation to take possession and dispose of the nation's spent nuclear fuel and high-level nuclear waste, and DOE has established the Blue Ribbon Commission to review alternatives for such disposition.
February 1,2010	DOE filed with the NRC High Level Waste Hearing (HLWH) a motion to stay the licensing proceeding, pending "the disposition by the Board of any DOE motion under Section 2.107 filed within the next 30 days." The motion explained that DOE intended to move to withdraw the pending licensing application pursuant to 10 C.F.R. 9 2.107 within 30 days and that a stay would avoid unnecessary expenditure of resources by the Board, NRC, and other parties to the proceeding.
February 16,2010,	The NRC Licensing Board granted the stay motion pending resolution of DOE'S then-expected motion to withdraw the license application.
January 29,2010	At the direction of the President, the Secretary of Energy established the Blue Ribbon Commission on America's Nuclear Future, which will conduct a comprehensive review of, and consider alternatives for disposition of spent nuclear fuel and high-level radioactive waste. Congress had already endorsed creation of this Commission by appropriating \$5 million in October 2009 for a Blue Ribbon Commission to evaluate and recommend such alternatives.
Charter of the Blue Ribbon Commission	
Charter of the recently established Blue Ribbon Commission (which must issue recommendations within 24 months), makes clear that the Commission will consider solutions not only for commercial spent nuclear fuel but also for DOE high level waste that may provide a quicker solution than construction of a repository at Yucca Mountain. <u>Blue Ribbon Commission on America's Nuclear Future Charter</u>	
IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT	
The following consolidated cases were filed with the US Court of Appeals for District of Columbia	
February 19, 2010	Petition for Declaratory and Injunctive Relief and Writ of Mandamus, filed seeking relief against the Department of Energy ("DOE"), Nuclear Regulatory Commission ("NRC"), and agency officials was filed in the US Court of Appeals and docketed as Aiken County, D.C. Cir. No. 10-1050
February 25, 2010,	Petition for review, docketed as Ferguson v. <i>Obama</i> , D.C. Cir. No. 10- 1052, was filed in the Court of appeals against the DOE and President Obama purporting to seek review of the "final action of the President and Secretary of Energy to abandon and not to proceed with plans to apply for and pursue a license for, and to construct, a repository for high level radioactive waste at Yucca Mountain."
February 26, 2010,	South Carolina filed in the Fourth Circuit a "Petition for Review and Petition for Writ of Mandamus, Writ of Prohibition, Stay, and/or Declaratory and Injunctive Relief" naming as respondents the DOE, President Obama, the NRC, and agency officials; that case was

	transferred to the US Court of Appeals and docketed as <i>South Carolina v. U.S. Dept of Energy</i> , D.C. Cir. No. 1 0- 1 069.
March 24,2010	Federal respondents filed a response to the petition
April 8, 2010,	The three petitions were consolidated and the US Court of Appeals ordered a response to motions to expedite filed by <i>Ferguson</i> and <i>State of South Carolina</i> petitioners.
April 2 and April 7	<p>Petitioners in <i>Ferguson</i> and <i>State of South Carolina</i> filed motions to expedite briefing and consideration of the petitions in the US Court of Appeals. They contend that any delay in judicial review will cause a substantial delay in the opening of any permanent repository for high level waste at Yucca Mountain, and consequently delay the time when they will cease being exposed to risks from exposure to high level waste stored at the Hanford Nuclear Reservation (Ferguson Mot. at 10-12) or Savannah River Site (South Carolina Mot. at 1 3).g. Petitioners also contend that the case should be expedited because there is an unusual public interest in prompt disposition of this suit. Petitioners' argument is that DOE's action of seeking to withdraw the license application is a failure to take required action. However, in the absence of NRC's grant of DOE's motion, DOE has not effected a withdrawal of the application; thus, there has as yet been no failure to take the alleged required action. <u>US Court of Appeals – Letter to Annette Vietti-Cook Secretary of the Commission U.S. Nuclear Regulatory Commission In the Matter of the U.S. Department of Energy (High-Level Waste Repository), Docket No. 63-001-HLW</u></p> <p>(argument) Even if the NRC grants DOE's motion to withdraw, this would not give rise to a "genuine failure to act" claim because petitioners' are objecting to DOE's affirmative act of withdrawing the license application. In the end, there is insufficient reason for the parties to spend extensive time and resources briefing these fundamental problems with the various petitions, and this Court resolving them, when some or all of these problems could be eliminated should the Commission issue a final reviewable order. The Commission even may take action - such as denying the motion to withdraw - that would eliminate some or all of petitioners' complaints in this case. At the very least, the Commission may take action that would help crystallize the jurisdictional and merits issues in this case. This Court should hold this matter in abeyance for at least 30 days to allow opportunity for the Commission to review DOE's April 12 petition and to take further action. Only after the Commission's review will it be clear whether the NRC Licensing Board or Commission will (as it should) decide in the first instance the issues surrounding DOE'S motion to withdraw its application, and only then will the jurisdiction and justiciability issues pending before this Court be properly framed for this Court's review and decision. And, for reasons to which we now turn, this temporary stay would not cause petitioners undue hardship.</p>
HLW Hearings	
March 3,20 10	DOE filed in the HLW Hearing a motion to withdraw the license application and five parties, including South Carolina and Aiken County, two of the petitioners in this Court, thereafter filed petitions to intervene in the NRC proceeding to oppose DOE'S motion to withdraw.
March 5,2010	The NRC Licensing Board issued a scheduling order providing a due date for answers to the then-pending petitions to intervene and stating that the Board will set a time for responses to DOE'S motion to withdraw after" resolving the petitions to intervene.
April 6,2010	However, the NRC Licensing Board changed course and announced that it will withhold a decision on the petitions to intervene and DOE's motion to withdraw pending this Court's ruling on -the petitions before this Court. The Board deemed it more expedient for the US

	<p>Court of Appeals to provide it guidance by deciding in the first instance whether DOE has authority to withdraw the license applications. The NRC Licensing Board's April 6 order, however, is an interlocutory order of an administrative hearing tribunal within the NRC and does not necessarily reflect the views of the Commission itself.</p>
April 12, 2010	<p>Just before the filing of the instant response - DOE filed a request for review of the Board's interlocutory order by the NRC Commission (the body with the final authority over NRC adjudications).</p>
April 14, 2010	<p><u>.US Court of Appeals – Letter to Annette Vietti-Cook Secretary of the Commission U.S. Nuclear Regulatory Commission In the Matter of the U.S. Department of Energy (High-Level Waste Repository), Docket No. 63-001-HLW</u></p> <p>(argument) Even if the NRC grants DOE's motion to withdraw, this would not give rise to a "genuine failure to act" claim because petitioners' are objecting to DOE's affirmative act of withdrawing the license application. In the end, there is insufficient reason for the parties to spend extensive time and resources briefing these fundamental problems with the various petitions, and this Court resolving them, when some or all of these problems could be eliminated should the Commission issue a final reviewable order. The Commission even may take action - such as denying the motion to withdraw - that would eliminate some or all of petitioners' complaints in this case. At the very least, the Commission may take action that would help crystallize the jurisdictional and merits issues in this case. This Court should hold this matter in abeyance for at least 30 days to allow opportunity for the Commission to review DOE's April 12 petition and to take further action. Only after the Commission's review will it be clear whether the NRC Licensing Board or Commission will (as it should) decide in the first instance the issues surrounding DOE'S motion to withdraw its application, and only then will the jurisdiction and justiciability issues pending before this Court (District Court of Appeals) be properly framed for this Court's review and decision. And, for reasons to which we now turn, this temporary stay would not cause petitioners undue hardship.</p>
April 23, 2010	<p>The NRC Commission vacated the Hearing Board's Suspension Order and remanded the matter to the NRC Hearing Board for prompt resolution of DOE's motion to withdraw. "We direct the Board to establish a briefing schedule on DOE's motion to withdraw and issue a decision on that motion no later than June 1, 2010. The Board should continue case management and resolve all remaining issues promptly."</p>
April 27, 2010	<p>The CAB Board responded the NRC Commission directions stating they recognize their obligation to comply with the Commission's direction but also "insofar as Possible." Also, that the complexity of the issues, the desirability of holding oral argument, and a previously-established filing date concerning a related issue render a decision by June 1, 2010 infeasible. Instead, in accordance with the Commission's direction to resolve all pending matters expeditiously and responsibly, the Board will decide DOE's motion to withdraw as soon as possible after June 1 and, in no event, later than June 30.</p>