

**Statement on Behalf of**  
**The States of Maine, Connecticut, and Massachusetts**  
**Regarding DOE's Failure to Remove**  
**Spent Nuclear Fuel From Shutdown Reactor Sites**

**Senate Energy and Natural Resources Committee**  
**September 28, 2000**

The States of Maine, Connecticut, and Massachusetts (the "States") join Maine Yankee, Connecticut Yankee, and Yankee Atomic in urging Congress to assure the prompt removal of high-level radioactive waste and spent nuclear fuel ("spent fuel") from shutdown nuclear plants. Rather than risking depletion of the Nuclear Waste Fund (the "Fund") through payments for indefinite long-term storage at shutdown nuclear plant sites, the Department of Energy ("DOE") should use the Fund *only* for its intended purpose – removal of spent fuel. There are no technical or legal barriers that would bar DOE from removing spent fuel from shutdown plants. DOE has authority to move spent fuel to any of the numerous existing DOE facilities – the same way that it routinely accepts spent fuel generated by foreign and research reactors. The States simply ask that DOE exercise its authority and fulfill its obligation to remove the spent fuel at shutdown plants.

DOE's continued failure to remove spent fuel as Congress directed in the Nuclear Waste Policy Act impacts most acutely those states that host shutdown commercial nuclear reactors. Such plants – like the three Yankee plants – have permanently ceased producing power and are now being dismantled and decommissioned. When decommissioning is complete (by no later than 2004 for these plants), the states and localities reasonably anticipated that the plants' nuclear licenses would be terminated and the sites would be available for other productive uses. Because the States' citizens paid

DOE for disposal of spent fuel (as part of their electric rates), the States had no reason to expect that these fully decommissioned plant sites would be involuntarily appropriated as long-term spent fuel storage sites.

Until DOE removes spent fuel, these former nuclear plant sites will not be fully available for alternative uses. The existing infrastructure at some of those sites may have significant value. So long as spent fuel remains on the site, however, it will be difficult for the States and local communities to realize the economic productivity that would come from a smooth transition to an alternative use. DOE's failure to meet its obligations not only increases the burden on the country's taxpayers (who may be required to pay for damages attributable to spent fuel storage) but creates long-term radioactive waste storage sites that could deprive the States of potentially valuable commercial or recreational property.

Recent developments in the Court of Federal Claims litigation and in DOE's settlements suggest that DOE may divert the funds that the States' ratepayers contributed expressly to assure prompt removal of spent fuel to pay instead for open-ended on-site storage. The States have long supported litigation seeking to compel DOE to perform its obligations and to remove spent fuel, but the courts have thus far limited remedies to monetary damages. The Yankees have vigorously pursued those available remedies. Despite clear findings of liability, DOE continued efforts to avoid (or at least delay) any judicial determination of damages by arguing that the Court of Federal Claims has no jurisdiction to hear utilities' claims. On August 31, 2000, however, the Court of Appeals for the Federal Circuit ruled that utilities are entitled to sue for damages in the Court of Federal Claims. This is a significant step toward holding DOE legally accountable and

seeking compensation for increased costs. Nevertheless, it still does not address the States' fundamental concern – that monetary damages to pay the millions of dollars in incremental costs of protracted on-site storage does not move spent fuel any sooner. In spite of DOE's attempts to postpone fulfilling its legal mandate, taxpayers may be responsible for billions of dollars in damages because of DOE's breach of its statutory and contractual obligation without bringing us any closer to a solution that actually removes spent fuel from plant sites.

The States fully support DOE's use of available funds – including the Nuclear Waste Fund – to expedite removal of spent fuel but oppose payments from the Fund that could jeopardize that objective. We urge the Congress to persist in its diligent stewardship of the Fund to ensure that it is not diverted to build or maintain on-site spent fuel storage facilities but is used to pay for removal of spent fuel at the earliest possible time in accordance with DOE's statutory and contractual responsibility.