

# Nuclear official's stark farewell: Scrap Yucca

## Member of regulatory panel says it 'may be time to stop digging'

By Lisa Mascaro

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WASHINGTON — The longest serving member of the Nuclear Regulatory Commission is stepping down, and, on his way out, saying something about Yucca Mountain that few in government dare to suggest out loud: "It may be time to stop digging."

The reason Commissioner Edward McGaffigan Jr. gives for his conclusion, however, is not that the mountain is a bad site or the science of storing radioactive fuel is unsound, two of the major arguments critics have mounted.

Rather, Yucca Mountain is unlikely to ever open as a storage site for nuclear waste largely because the politics were flawed at the start, he said. Nevada never wanted it.

The state has fought the project for two decades, finding allies in science and environmental quarters, and elsewhere. Together, those critics have created a machine dedicated to one purpose. The only option McGaffigan sees at this point - \$9 billion later - is to start over.

"There is no chance Yucca can go forward under current statute," McGaffigan said. "I would go back to the beginning. When you go out of process it's a problem, it's a huge political problem. If a process is done fairly, I think you have a shot."

McGaffigan feels free to speak his mind because he is dying.

The cancer he knocked back six years ago returned last summer with new aggression. What started as a bout of melanoma now checkers his brain.

McGaffigan notified President Bush in January that he could not finish his term on the commission, where he has served since 1996.

In an interview with the Sun last week, as McGaffigan sat with his back to a window on suburban Rockville, Md., it was clear that cancer drugs have taken a toll. They have robbed him of the flop of preppy gray hair seen in pictures on the hallway walls and the ID card dangling from his neck.

His departure from the Nuclear Regulatory Commission will end a distinguished career for the 58-year-old Harvard-trained physicist, one that included two years in Moscow as an American diplomat and a second master's degree, in public policy. The experiences have shaped a mind that answers questions nimbly, in a soft voice that moves nonstop, the words tumbling from history to science to public policy.

After returning from Moscow, he worked in President Ronald Reagan's science office in the 1980s. He was there when Congress passed the 1982 Nuclear Waste Policy Act that set the course for creating a repository, officially kicking off the hunt for a site.

McGaffigan said he barely remembers passage of the 1987 legislation dubbed by the state as the "Screw Nevada Bill." In it, Congress designated Yucca Mountain the only site for the nuclear waste repository. After joining the Nuclear Regulatory Commission a decade later, McGaffigan began studying Yucca Mountain. He says he didn't like what he found.

He doubted that downwinders in Nevada could be protected for 1 million years from cancer-causing radiation, as required by the law. He thought it was an impossible standard.

His doubts grew as scientists and bureaucrats were found not documenting their work with the rigor required by the regulatory community, forcing do-overs, including the \$25 million now being spent on water infiltration data that may have been falsified. "Rework is not a good sign of a healthy project," he said.

Through those early years, he saw Yucca directors come and go. He got the feeling their strategy at the Energy Department was "to promise dates — and good luck to our successors in making those dates work."

The original 1998 opening date had long since been abandoned, burdening the government with a projected \$7 billion liability from utility company lawsuits. The department next missed its 2000 deadline for applying for a license.

By 2002 McGaffigan's thinking shifted further. President Bush gave final approval on years of study, moving Yucca Mountain forward as the nation's repository. The state, under the original law, was offered an extraordinary veto power, which then-Gov. Kenny Guinn exercised that year.

When Congress used its ability to override the veto, "I knew it had problems," McGaffigan said.

That year was a turning point for him, he said. Here was the chance for the Energy Department to face up to the opposition by admitting shortcomings and push for changes needed in land and water rights, funding, transportation and storage capacity.

But no one spoke up. Energy Department officials seemed to operate on the vague idea that "someday Nevada's going to sue for peace, and we'll make this all part of the package."

McGaffigan calls that naive.

"They weren't telling Congress — their friends, the people who wanted to help them — 'Here's what's

needed to open the repository.' There was a time when they might have gotten it done."

McGaffigan started speaking out a bit during these years. He was quoted in the Sun in 2003 as saying the 2010 opening date was just about impossible. He wonders now whether he should have said more.

As a commissioner, he was bound to stay neutral or forgo participation in Yucca Mountain issues. But by 2004, he said he knew the law as written could never work - and he suspected the Energy Department officials realized as much 15 years earlier.

"They managed to lock themselves into solutions that didn't work. I grew more frustrated over time that we weren't honestly dealing with the issue."

Last year, the department brought many of the problems to Congress with its "Fix Yucca Bill" that drew little support on Capitol Hill. With Democrats, led by Senate Majority Leader Harry Reid of Nevada, now in charge, the bill is given virtually no chance of passing.

As McGaffigan prepared last fall for his latest rounds of chemotherapy, he decided he had to speak out. He told Reid as well as the boss he had before he took the commission job, Sen. Jeff Bingaman, D-N.M., of his plans.

McGaffigan said he believes that Congress should set up a bipartisan commission to study new sites and hand a report to the new president in 2009.

"This is not that hard a problem," he said. "We need to put this on a path where states are treated from the get-go with great respect and deference - and I don't believe that will result in 50 states saying no.

"If you chose a course that is hostile to the state - if you try to jam something down a state's throat, it won't work."

After McGaffigan began speaking out, the Energy Department attacked him initially, then softened its criticism in deference to the commissioner's health.

Deputy Energy Secretary Clay Sell told reporters this week the department still has "some level of confidence" it can meet the new deadline to apply for a license by 2008. The opening, now scheduled for 2017, could well be put off until 2020, he said.

But Sell said there's "no question in my mind" the Nevada site can work. At the Nuclear Regulatory Commission office, McGaffigan's cadence quickens and his eyes light up as he strives to make a point: He supports nuclear power, always has. He sees it as critical to solving global warming and meeting the nation's rising energy needs.

It's just that he no longer supports Yucca Mountain. "I knew I had a very limited time left, and this was one of the first things that came into my mind," he said.

"I didn't want my legacy just to be that, 'He and his colleagues did a good job managing NRC for a decade.' I wanted this issue to be dealt with."

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