

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NEVADA,

Petitioner,

v.

UNITED STATES OF AMERICA
and the UNITED STATES
NUCLEAR REGULATORY
COMMISSION,

Respondents.

Case No. 03- 1058

PETITION FOR REVIEW

The State of Nevada hereby petitions the Court for review of the United States Nuclear Regulatory Commission's ("NRC") denial of Nevada's Petition for Rulemaking, docketed as PRM-63-1. Nevada's Petition had requested that NRC amend 10 C.F.R. Part 63, its regulations governing the disposal of high-level radioactive waste in a proposed geologic repository at Yucca Mountain, Nevada. 10 C.F.R. Part 63 is a final rule of the NRC, and it was published in the Federal Register, 66 Fed. Reg. 55,732-55,816 (attached at Tab A), on November 2, 2001. NRC's denial of Nevada's Petition for Rulemaking is a final agency action, and it was published in the Federal Register, 68 Fed. Reg. 9023-9032 (attached at Tab B), on February 27, 2003. The amendments

requested by Nevada were necessary to be made in order for 10 C.F.R. Part 63 to be in conformity with, and not in violation of, the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. § 10101, *et seq.* (the Act).

This Court has jurisdiction over this Petition for Review pursuant to Section 119 of the Act, 42 U.S.C. § 10139. Alternatively, this Court has jurisdiction over this Petition for Review pursuant to 28 U.S.C. §§ 2342(4) and 2344.

Venue is proper in the United States Court of Appeals for the District of Columbia Circuit pursuant to Section 119 of the Act, 42 U.S.C. § 10139. Alternatively, venue is proper under 28 U.S.C. § 2343.

WHEREFORE, the State of Nevada respectfully requests that the Court, *inter alia*:

- (1) Grant this Petition for Review;
- (2) Declare that Part 63 is inconsistent with applicable law;
- (3) Direct the NRC to reissue Part 63 incorporating the amendments requested by Nevada in Petition for Rulemaking PRM-63-1 to make it consistent with the Act, other applicable laws, and this Court's findings; and
- (4) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Brian Sandoval, Attorney General
Marta A. Adams,* Sr. Deputy Attorney General
STATE OF NEVADA
100 North Carson Street
Carson City, NV 89701
(775) 684-1237 TEL
(775) 684-1108 FAX

Elizabeth A. Vibert, Deputy District Attorney
CLARK COUNTY, NEVADA
500 South Grand Central Parkway
Las Vegas, NV 89106
(702) 455-4761 TEL
(702) 382-5178 FAX

Bradford R. Jerbic, City Attorney
William P. Henry, Senior Litigation Counsel
CITY OF LAS VEGAS, NEVADA
400 Stewart Avenue
Las Vegas, NV 89101
(702) 229-6590 TEL
(702) 386-1749 FAX

Joseph R. Egan,*
Special Deputy Attorney General
Charles J. Fitzpatrick*
Martin G. Malsch*
Howard K. Shapar*
EGAN & ASSOCIATES, P.L.L.C.
7918 Jones Branch Drive, Suite 600
McLean, VA 22102
(703) 918-4942 TEL
(703) 918-4943 FAX

Charles J. Cooper*
Robert J. Cynkar*
Vincent J. Colatriano*
COOPER & KIRK, PLLC
1500 K Street, N.W., Suite 200
Washington, D.C. 20001
(202) 220-9600 TEL
(202) 220-9601 FAX

William H. Briggs, Jr.*
ROSS, DIXON & BELL, L.L.P.
2001 K Street, N.W.
Washington, D.C. 20006-1040
(202) 662-2063 TEL
(202) 662-2190 FAX

Antonio Rossman
Special Deputy Attorney General
Roger B. Moore
Special Deputy Attorney General
LAW OFFICE OF ANTONIO ROSSMANN
380 Hayes Street
San Francisco, CA 94102
(415) 861-1401 TEL
(415) 861-1822 FAX

Joseph R. Egan*
Counsel of Record

Attorneys for Petitioner the State of Nevada

DATED: March 4, 2003

* Member, D.C. Circuit Bar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION
FOR REVIEW was served this 4th day of March, 2003, by certified mail on:

Ms. Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
(301) 415-7000 –Tel

Karen D. Cyr, Esq.
General Counsel
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
(301) 415-1743 – Tel

The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Roscoe C. Howard, Jr.
United States Attorney
U.S. Attorney's Office
District of Columbia
Judiciary Center
555 Fourth Street, N.W.
Washington, D.C. 20530

Vincent J. Colatristano