

EGAN, FITZPATRICK, MALSCH & CYNKAR, PLLC

Counselors at Law

The American Center at Tysons Comer
8300 Boone Boulevard • Suite 340
Vienna, Virginia 22182
Tel: (701) 891-4050
Fax: (703) 891-4055

www.nuclearlawyer.com

1777 N.E. Loop 410 • Suite 600
San Antonio, Texas 78217
Tel: (210) 820-2667
Fax: (210) 820-2658

Joseph R. Egan
Martin G. Malsch
Robert J. Cynkar

Charles J. Fitzpatrick

April 21, 2005

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington D.C. 20555-0001

Attn: Rulemakings and Adjudications Staff

Dear Madam Secretary:

Over one month ago the State of Nevada properly filed a petition for rulemaking to amend the Commission's "Waste Confidence" rule. Since then the State has received no notification from the Commission regarding the assignment of a docket number and docketing of the petition. Moreover, the petition is not currently listed along with other active petitions for rule making on the Commission's web site and there has been no notice of receipt of the State's petition in the Federal register. All this is contrary to regulation (10 CFR § 2.802) and standard Commission practice for other rule making petitions. The State respectfully requests that it be advised immediately when these steps will be taken. Failure to take these routine actions within a reasonable time would constitute a constructive denial of the State's petition, casting a cloud over the Commission's ability to act as an impartial adjudicator in any future Yucca Mountain licensing proceeding, and giving rise to an opportunity for judicial review.

Sincerely,



Martin G. Malsch
Counsel for the State of Nevada

cc. Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons

Luis A. Reyes
Executive Director for Operations

Karen D. Cyr, Esq.
General Counsel

Office of Administration
Attn: Mark J. Flynn, Director, Division of Administrative Services