

November 15, 2007

Catherine Cortez Masto
Attorney General
100 North Carson Street
Carson City, NV 89701

Dear Ms. Masto:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter, dated October 16, 2007, to Mr. Luis Reyes, NRC's Executive Director for Operations. Your letter forwarded for the State of Nevada, a "Petition for an Independent Investigation and Suspension of Sandia National Laboratories from Further Work on the Yucca Mountain Project." Nevada asserts that Sandia National Laboratories (hereafter, Sandia) is not placing high enough priority on safety and scientific accuracy, as it prepares the post-closure safety analysis that the U.S. Department of Energy (DOE) will use to support a license application for the proposed repository at Yucca Mountain. Nevada requests that NRC bar work by Sandia from consideration in NRC's review of the expected license application. Nevada also asks that NRC suspend Sandia from any future work on the Yucca Mountain project, pending the results of an independent, external investigation, and subsequent confirmation of what Nevada describes as a new safety culture at Sandia. As the basis for these requests, Nevada asserts that Sandia lacks a suitably safety-conscious environment for performing work on Yucca Mountain for DOE.

Pursuant to Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions", we assembled a Petition Review Board to evaluate Nevada's petition request. On careful review, the board concluded that the petition request does not meet the criteria for consideration under 10 CFR 2.206. You were informed of this decision in a letter, sent under separate cover today.

Because NRC has yet to receive a license application from DOE for the proposed repository, the NRC believes that the concerns raised by the petition request are best addressed in a future licensing proceeding, should NRC receive an application to build a repository at Yucca Mountain.

By law, DOE has the sole burden of proving to NRC, in a license application, that a geologic repository will be safe and that it will comply with applicable standards and regulations. NRC has both the responsibility and the authority to judge DOE's demonstration of safety. The NRC staff has the technical skills and experience to analyze the contents and supporting materials for any application DOE may submit, independently and on its merits. NRC will base its decision whether to deny or authorize construction of a repository at Yucca Mountain on such a staff analysis, as well as on a comprehensive and independent safety review, and on consideration of the results of a full and impartial public hearing, before an independent panel of judges.

My staff in our Division of High-Level Waste Repository Safety and NRC's dedicated contractors at the Center for Nuclear Waste Regulatory Analyses, are qualified and well-equipped to perform this review. We are prepared to conduct a detailed, independent evaluation of DOE's license application, should we receive one. In that review, we will evaluate the adequacy and completeness of the safety case DOE presents, including the post-closure safety analysis. If DOE's application fails to make the necessary demonstrations of safety and compliance, the NRC staff will be unable to authorize construction. The NRC staff will document the conclusions of this comprehensive safety review in a public Safety Evaluation Report.

Once we have completed our review and documented our conclusions, NRC will hold formal, public, evidentiary hearings on DOE's application before an independent panel of judges. These hearings will afford all potential parties, including the State of Nevada, with the opportunity to propose and justify contentions about the completeness and adequacy of the safety case DOE presents in its license application. Ultimately, NRC will decide whether to deny or authorize construction of the proposed repository by objectively reviewing information submitted. NRC will not prejudge the adequacy of a potential license application, or the safety analyses it may contain, before an application is received. NRC will reach an informed and objective decision only after it has completed its rigorous, independent regulatory review and licensing process.

Thank you for bringing Nevada's concerns to our attention. If you have any questions about this response, please contact Dr. Janet Kotra, at (301) 492-3190.

Sincerely,

/RA/

Aby S. Mohseni, Deputy Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: Marta A. Adams
See attached list.

Letter to: C. Masto from: A. Mohseni dated: November 15, 2007

cc:

A. Kalt, Churchill County, NV	A. Elzeftawy, Las Vegas Paiute Tribe
R. Massey, Churchill/Lander County, NV	J. Treichel, Nuclear Waste Task Force
I. Navis, Clark County, NV	W. Briggs, Ross, Dixon & Bell
E. von Tiesenhausen, Clark County, NV	R. Murray, DOE/OCRWM
J. Birchim, Yomba Shoshone Tribe	G. Runkle, DOE/Washington, D.C.
R. Damele, Eureka County, NV	S. Bokhari, DOE/RW
L. Marshall, Eureka County, NV	S. Gomberg, DOE/Washington, D.C.
A. Johnson, Eureka County, NV	D. Curran, Harmon, Curran, Spielberg & Eisenberg, L.L.P.
S. Schubert, Sen. Reid's Office	R. Dyer, DOE/OCRWM
M. Yarbro, Lander County, NV	J. Espinoza, GAO
J. Donnell, DOE/OCRWM	A. Gil, DOE/OCRWM
M. Baughman, Lincoln County, NV	W. Boyle, DOE/OCRWM
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M. Simon, White Pine County, NV	A. Benson, DOE/OCRWM
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R. Herbert, NV Sen. Reid's Office	S. Cereghino, BSC
M. Murphy, Nye County, NV	B. Gattoni, Burns & Roe
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K. Kirkeby, NV Congressional Delegation	J. Gervers, Clark County, NV
R. Loux, State of NV	D. Beckman, BSC/B&A
S. Frishman, State of NV	J. Raleigh, SNL
S. Lynch, State of NV	J. Kennedy, Timbisha Shoshone Tribe
P. Guinan, Legislative Counsel Bureau	B. Durham, Timbisha Shoshone Tribe
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R. Anderson, NEI	

cc: (Continued)

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K. Skipper, USGS

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J. Bacooh, Big Pine Paiute Tribe of Owens Valley

P. Thompson, Duckwater Shoshone Tribe

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G. Hernandez, Las Vegas Paiute Tribe

K. Finfrock, NV Congressional Delegation

P. Johnson, Citizen Alert

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J. Williams, DOE/Washington, DC

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M. Plaster, City of Las Vegas

S. Rayborn, Sen. Reid's Office

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R. Holland, Inyo County

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C. Meyers, Moapa Paiute Indian Tribe

C. Dahlberg, Fort Independence Indian Tribe

D. Vega, Bishop Paiute Indian Tribe

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J. Leeds, Las Vegas Indian Center

J. C. Saulque, Benton Paiute Indian Tribe

C. Bradley, Kaibab Band of Southern Paiutes

R. Joseph, Lone Pine Paiute-Shoshone Tribe

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E. Smith, Chemehuevi Indian Tribe

D. Buckner, Ely Shoshone Tribe

V. Guzman, Walker River Paiute

D. Eddy, Jr., Colorado River Indian Tribes

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L. Newman, DOE/OCRWM

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Sincerely,

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Aby S. Mohseni, Deputy Director
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Office of Nuclear Material Safety
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cc: Marta A. Adams
See attached list

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