

# Transportation System Capability

- The utility/transportation interface is constantly evolving
- The last comprehensive survey of utility interfaces was made 12 years ago and is of minimal planning value due to the evolving utility interfaces driven by the deployment of dry storage systems
- The Office of Civilian Radioactive Waste Management (OCRWM) collects data on utility capabilities on Facility Interface Data Sheets (FIDS)
- OCRWM will work with utilities to update data on their site capabilities. This effort is planned to begin about five years in advance of the first shipment
- Updates are also planned, in this same timeframe, for assessments of the near site transportation infrastructure



# Infrastructure Support

- The Department of Energy (DOE) has no plans to provide funding for any upgrades to generator site or national transportation infrastructure to support shipments
- Under the Proposed Action, the Nevada Rail Line (NRL) would transport 9,495 rail casks in 2,833 spent nuclear fuel trains to the repository. The transportation infrastructure is designed around Transportation, Aging and Disposal (TAD) canisters, but is insensitive to the type of rail cask used
- In the 2008 Yucca Mountain Supplemental Environmental Impact Statement (SEIS), DOE analyzed the intermodal transfer of rail casks for generator sites that do not have direct rail access
- Studies of national infrastructure (available to improve transportation efficiency) will be conducted approximately five years before shipments begin



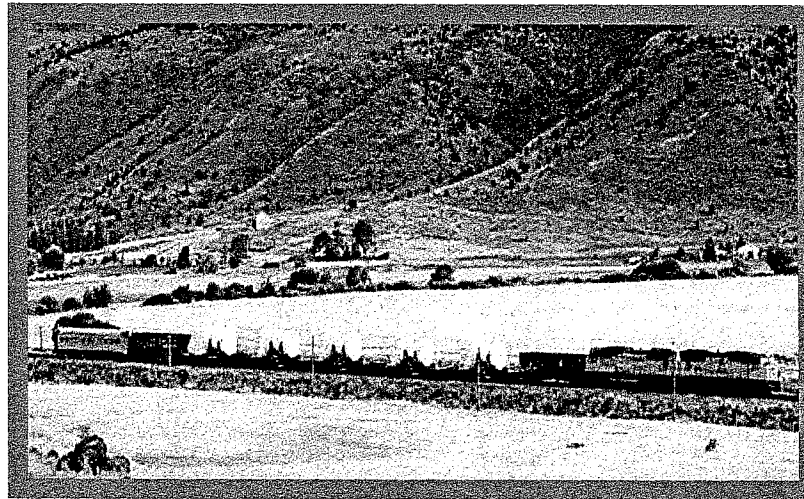
# Nevada Rail Line (NRL) Development

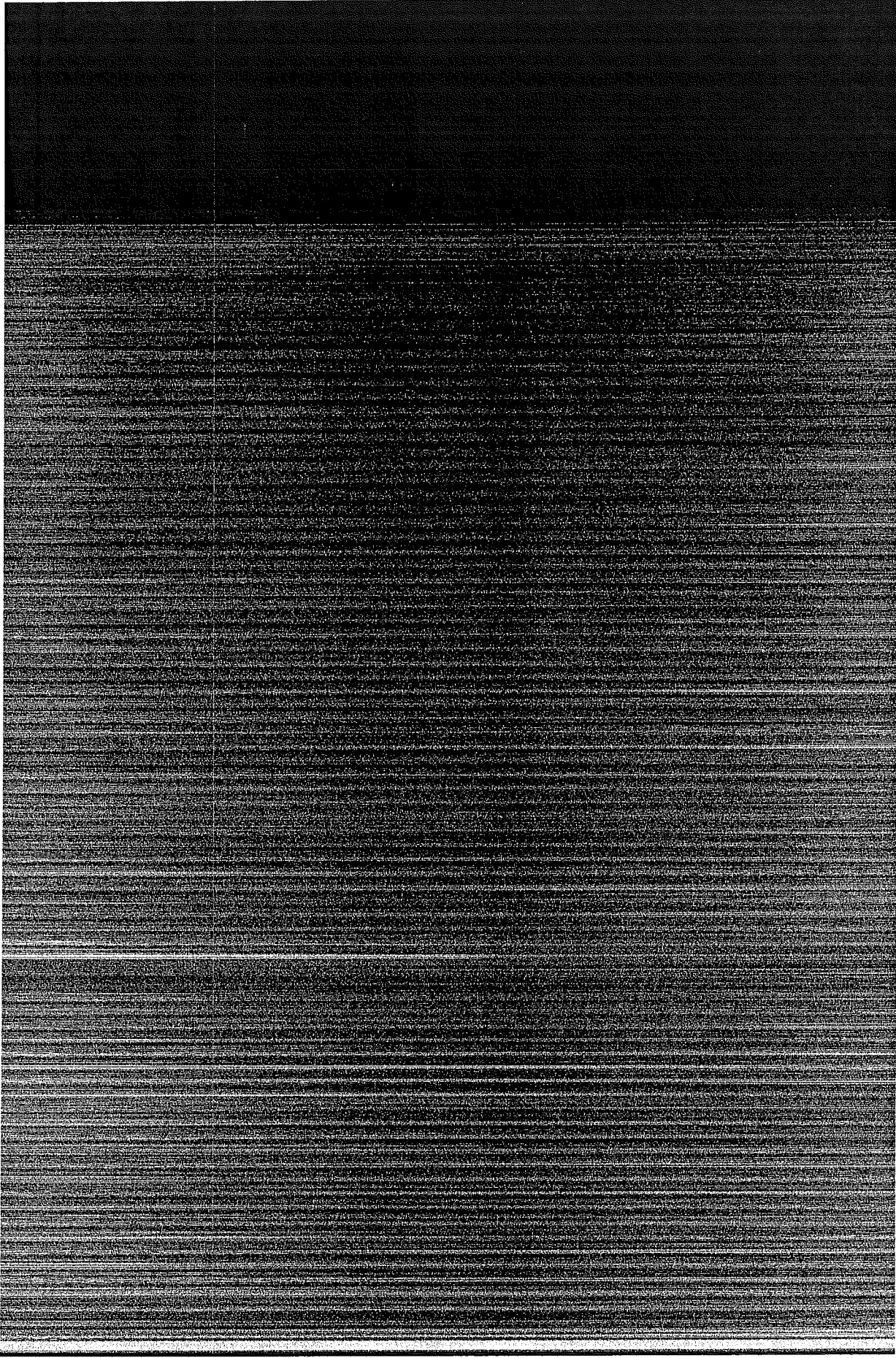
- **DOE selected the preferred alternative of Mostly Rail as the mode of transport, both nationally and in Nevada**
- **There are no design and construction challenges with development of the NRL along the analyzed corridors and alignments within the 2008 Final Nevada Rail Corridor SEIS and Rail Alignment EIS**
- **DOE expanded the discussion of processes for impact mitigation in the Final Rail Alignment EIS. If an alignment is selected, those processes would begin in earnest**



# Summary

- The utility/transportation interface continues to evolve as the transportation system develops. Processes are in place to adapt the transportation planning to the infrastructure in place when shipments start
- The NRL remains a priority for development of the repository system
- The rail industry is well prepared to design, construct and operate the new rail line in the state of Nevada





## ATTACHMENT 5

March 20, 2008

Martin G. Malsch, Esq.  
Egan, Fitzpatrick & Malsch, PLLC  
2100 K St. NW, Suite 400  
Washington, D.C. 20006

SUBJECT: REQUEST BY NEVADA FOR RECONSIDERATION AND CLARIFICATION OF  
NOTICE OF DENIAL

Dear Mr. Malsch:

This letter responds to your letter dated February 13, 2008. Your letter requested reconsideration and clarification of several aspects of the denial of PRM-51-9, published in the Federal Register on January 31, 2008. 73 Fed. Reg. 5762 (Jan. 31, 2008). PRM-51-9 requested that the NRC modify its regulatory criteria for adopting a final environmental impact statement (FEIS) prepared by the Secretary of the Department of Energy (DOE) in proceedings for issuing a construction authorization and materials license for a geologic repository.

You make two specific requests in your letter. First, on page two, you request that the Commission confirm three assumptions, which are explained on the same page. Second, page three of your letter asks the Commission to explain its decision, and to provide some indication of how the NRC staff will make a decision to adopt the DOE's EIS without performing any independent review of the draft EIS. These requests are addressed below.

### Confirmation of Assumptions

First, Nevada requests that the Commission confirm: (1) the assumption that "claims attacking the validity of the Yucca EIS would automatically satisfy the second prong of the test in § 51.109(c) . . . that is, that claims attacking the validity of the Yucca EIS would be cognizable in the Yucca Mountain licensing hearing not only because they constitute 'new considerations' in light of NEI v. EPA, but also because the 'new considerations,' if true, would render the EIS inadequate"; (2) the assumption "that the scope of possible substantive NEPA issues in the licensing hearing will not be limited merely by the fact that, under the NWPA, it will be the adoption decision that is contested rather than the adequacy of the Yucca EIS *per se*"; and (3) the assumption that "[t]he Commission must . . . believe that any substantive NEPA claim is a new consideration meeting the non adoption criterion in 10 C.F.R. § 51.109(c)(2), regardless of whether it is based on new information or new considerations arising before or after DOE's site recommendation." These assumptions are addressed individually below.

### *Assumption 1*

Your first assumption is not entirely clear as written. The NRC would treat as cognizable in the Yucca Mountain proceeding an attack on the Yucca Mountain EIS based on significant and substantial considerations which, if true, would render the EIS inadequate. If that is your

assumption, you are correct. The Commission did not automatically assume at the outset that all claims challenging the validity of the FEIS would contain "significant and substantial" information that, if true, would render the FEIS "inadequate." That issue is left to be resolved in the Yucca Mountain licensing proceeding and will be decided in the context of specific contentions filed in that proceeding.

#### *Assumption 2*

You also request confirmation that the scope of substantive issues that may be raised in the Yucca Mountain licensing proceeding will not be limited because NRC's adoption decision – as opposed to the adequacy of the FEIS standing alone – will be at issue. Given the *NEI* decision and the Commission's statement that substantive claims challenging the FEIS will be considered "new considerations" in the context of § 51.109(c), the scope of the possible substantive challenges to the FEIS would not be limited to claims that would come as challenges to the NRC's decision to adopt the FEIS. But the fact that the NRC would be adopting DOE's FEIS pursuant to the direction provided in the Nuclear Waste Policy Act (NWPA) would continue to affect whether a specific challenge to the NRC's adoption decision is suitable for litigation in the Yucca Mountain licensing proceeding. In this regard, the higher threshold for evidence needed to support contentions in § 51.109(a)(2), remains in effect. Thus, Nevada's ability to develop contentions that meet the requirements of § 51.109, which reflects the unique nature of NRC's adoption decision under the NWPA, will continue to determine whether any specific contention is admissible.

#### *Assumption 3*

Finally, you ask for confirmation that a substantive NEPA claim is a new consideration meeting the criterion in 10 CFR 51.109(c)(2), whether it is based on new information or new considerations arising before or after DOE's site recommendation. This assumption is correct. Of course, as explained above, the Commission makes no assumptions or predictions about whether any specific substantive claim challenging the validity of the FEIS would, in fact, contain "significant and substantial" information that, if true, would render the FEIS "inadequate" or that such a claim will be supported for admission as required by 10 CFR 51.109(a)(2).

#### NRC Staff's Decision to Adopt DOE's FEIS

The second specific request in your letter asks the Commission to explain how the NRC staff "will make its adoption decision . . . without any independent review of the draft Yucca EIS." Your request seems to be based on the assertion on page two of your letter that, in denying PRM-51-9, "the Commission also decided that *NEI v. EPA* offered no reason for the Commission to reconsider its position that its Staff need not review the Yucca EIS independently before deciding whether to adopt it, as Nevada requested in its petition." But PRM-51-9 did not directly raise, and the denial did not directly address, the issue of how the NRC staff's adoption review would be conducted. The denial did not state that NRC staff would make its adoption decision "without any independent review" of the FEIS.

The NRC staff will review the FEIS to the extent necessary to support its adoption decision. But the NRC staff's review will not duplicate the environmental review already performed by the DOE. As the *NEI* court recognized, the adoption requirement contained in the NWPA was intended to avoid duplication of the environmental review process. *NEI*, 373 F.3d 1314. In

M. Malsch

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addition, as acknowledged on page three of your letter, the NRC staff has already reviewed and commented on the draft EIS. The staff's adoption review of the FEIS will be informed by its prior review of the draft EIS.

Sincerely,

Bradley W. Jones/**RA**/  
Assistant General Counsel  
for Rulemaking & Fuel Cycle



M. Malsch

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addition, as acknowledged on page three of your letter, the NRC staff has already reviewed and commented on the draft EIS. The staff's adoption review of the FEIS will be informed by its prior review of the draft EIS.

Sincerely,

Bradley W. Jones/*RA*/  
Assistant General Counsel  
for Rulemaking & Fuel Cycle

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DATE	3/20/2008		3/20/2008		3/20/2008	

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prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 15, 2008.

**Cayetano Santos,**

*Branch Chief, ACRS.*

[FR Doc. E8-25147 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 5, 2008, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, November 5, 2008—1:30 p.m. until 5 p.m.*

The Subcommittee will discuss the Vogtle Electric Generating Plant (VEGP), Unit 1 and 2 license renewal application and the associated Safety Evaluation Report (SER). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, VEGP, Southern Nuclear Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Christopher Brown (telephone 301-415-7111) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268-58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 16, 2008.

**Cayetano Santos,**

*Branch Chief, ACRS.*

[FR Doc. E8-25149 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 63-001; CLI-08-25]

### In the Matter of U.S. Department of Energy (High Level Waste Repository); Notice of Hearing and Opportunity To Petition for Leave To Intervene on an Application for Authority To Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain

COMMISSIONERS: Dale E. Klein, Chairman; Gregory B. Jaczko, Peter B. Lyons, Kristine L. Svinicki.

#### I. Notice of Hearing

By letter dated June 3, 2008, the Department of Energy (DOE) submitted an application seeking authorization to construct a geologic repository at a geologic repository operations area at Yucca Mountain in Nye County, Nevada. The NRC published a notice of receipt and availability of this application in the **Federal Register** (73 FR 34348, corrected in 73 FR 40883 (June 17, 2008)). Notice is hereby given that a hearing on the application will be held at a time and place to be set in the future by the Nuclear Regulatory Commission (the Commission) or an Atomic Safety and Licensing Board (Board).

The hearing will consider the application for construction authorization filed by DOE pursuant to Section 114 of the Nuclear Waste Policy Act of 1982 (NWPAA), 42 U.S.C. 10134, and pursuant to 10 CFR Parts 2 and 63. The NRC Staff accepted the DOE application for docketing on September 8, 2008 (73 FR 53284 (September 15, 2008)), and the docket number established for this application is 63-001.

The NRC Staff determined that it is practicable to adopt, with further supplementation, the Environmental Impact Statement (EIS) and supplements prepared by DOE. The Staff concluded that neither the 2002 Final Environmental Impact Statement (FEIS) nor the 2008 Final Supplemental Environmental Impact Statement (Repository Supplemental EIS) adequately address all the impacts on groundwater, or from surface discharges of groundwater, from the proposed action. The Staff therefore found that additional supplementation is needed to

ensure that the 2002 FEIS and 2008 Repository Supplemental EIS are adequate. The basis for the Staff's position is presented in the "U.S. Nuclear Regulatory Commission Staff's Adoption Determination Report for the U.S. Department of Energy's Environmental Impact Statements for the Proposed Geologic Repository at Yucca Mountain," which is available in the Agencywide Documents Access and Management System (ADAMS) online document system at <http://www.nrc.gov/reading-rm/adams/web-based.html>, at accession number ML082420342.

The NRC Staff will complete a detailed technical review of the DOE application, and will document its findings in a safety evaluation report. If the Commission finds that the DOE application meets the applicable standards of the Atomic Energy Act of 1954, as amended (AEA), the NWPAA, and the Commission's regulations, then the Commission will issue a construction authorization, in the form and containing such conditions and limitations, if any, as the Commission finds appropriate and necessary.

#### II. Opportunity To Petition for Leave To Intervene

A hearing on DOE's construction authorization application will be held in the public interest pursuant to 10 CFR 2.101(e)(8). The hearing will be governed by the rules of procedure in 10 CFR Part 2, Subpart C, "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings"; Subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository"; and Subpart G, "Rules for Formal Adjudications." The matters of fact and law to be considered are whether the application satisfies the applicable safety, security, and technical standards of the AEA and NWPAA and the NRC's standards in 10 CFR Part 63 for a construction authorization for a high-level waste geologic repository, and also whether the applicable requirements of the National Environmental Policy Act (NEPA) and NRC's NEPA regulations, 10 CFR Part 51, have been met.

Any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written petition for leave to intervene in accordance with the requirements in 10 CFR 2.309, including contentions that satisfy the admissibility standards

in § 2.309. Petitioners seeking to intervene as parties must also comply with the procedural case management requirements set forth in the Advisory Pre-License Application Presiding Officer (PAPO) Board's Memorandum and Order, LBP-08-10 (Case Management Order Concerning Petitions to Intervene, Contentions, Responses, Replies, Standing Arguments, and Referencing or Attaching Supporting Materials), dated June 20, 2008, available at ADAMS accession number ML081720154, and the Advisory PAPO Board's Order (Regarding Contention Formatting and Tables of Contents), dated September 29, 2008, available at ADAMS accession number ML082730764. In addition, as outlined further below, the regulations in 10 CFR Part 2, Subpart J require electronic production, filing and service of all documents in this proceeding.

In ruling on a petition to intervene in this proceeding, the presiding officer shall consider any failure of the petitioner to participate as a potential party in the pre-license application phase under 10 CFR Part 2, Subpart J, in addition to the factors on standing to intervene outlined in 10 CFR 2.309(d).

A petition for leave to intervene must be filed no later than 60 days after the date of publication of this notice in the **Federal Register**. A non-timely petition or contention will not be entertained unless the Commission, an Atomic Safety and Licensing Board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filed requirements of 10 CFR 2.309(c)(1)(i)-(viii).

Certain hearing schedule milestones in Appendix D to 10 CFR Part 2, as well as the 30-day hearing petition and contention-filing deadlines set forth in 10 CFR 2.309(b)(2) and 51.109(a)(2) are superseded by this notice. A revised hearing schedule with new milestones for actions through the First Prehearing Conference Order appears in Section VI of this notice.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and will have the opportunity to participate fully in the conduct of the hearing.

The regulations in 10 CFR Part 2, Subpart J require electronic document production (via the Licensing Support Network) and electronic filing and service of adjudicatory documents via the Electronic Information Exchange (EIE). This requirement applies to all documents filed in the proceeding, including a petition for leave to intervene, and any motion or other

document filed in the proceeding prior to the submission of a petition to intervene. Pursuant to 10 CFR 2.1012(b)(1), a petitioner, including a potential party given access to the Licensing Support Network, may not be granted party status under 10 CFR 2.309, or status as an interested governmental participant under 10 CFR 2.315, if the petitioner cannot demonstrate substantial and timely compliance with the requirements in 10 CFR 2.1003 at the time of the request for participation in the high-level waste proceeding.<sup>1</sup> In addition, a petitioner will not be found to be in substantial and timely compliance unless the petitioner complies with all orders of the Pre-License Application Presiding Officer (PAPO) regarding electronic availability of documents. PAPO orders are available on the NRC's high-level waste electronic hearing docket at: [http://hlwehd.nrc.gov/Public\\_HLW-EHD/home.asp](http://hlwehd.nrc.gov/Public_HLW-EHD/home.asp), under HLW-EHD, folder titled PAPO\_HLW, subfolder titled Orders\_PAPÖ.

A petition for leave to intervene, and all filings in the adjudicatory proceeding, must be filed electronically in accordance with 10 CFR 2.1013(c)(1). At least 30 days prior to the filing deadline for a petition to intervene, the petitioner must contact the Office of the Secretary (SECY) by e-mail at: [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV) or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner, or its counsel or representative, already holds an NRC-issued digital certificate). Each petitioner will need to download the Workplace Forms Viewer™ to access the EIE, a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

<sup>1</sup> A person denied party or interested governmental participant status under 10 CFR 2.1012(b)(1) may request such status upon a showing of subsequent compliance with the requirements of 10 CFR 2.1003. The subsequent admission of such a party or interested governmental participant shall be conditioned on accepting the status of the proceeding at the time of admission.

Once a petitioner has obtained a digital ID certificate, has had a docket created, and has downloaded the EIE viewer, the petitioner can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. *Guidance for Electronic Submissions to the NRC* is a consolidated guidance document that sets forth the technical standards for electronic transmission and formatting electronic documents, and provides instructions on how to obtain and use the agency-provided digital ID certificate. A person who holds a current digital ID certificate for use in the proceedings before the PAPO or the Advisory PAPO need not obtain a new certificate. That certificate will remain valid for this proceeding.

Section 2.1013(c) defines service as completed when the filer/sender receives electronic acknowledgement ("delivery receipt") that the electronic submission has been placed in the recipient's electronic mailbox. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date.

Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, the applicant and any other participant (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located under the heading "Additional Information" on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally (301) 415-4737.

Documents submitted in adjudicatory proceedings will appear in the NRC's high-level waste electronic hearing docket at [http://hlwehd.nrc.gov/Public\\_HLW-EHD/home.asp](http://hlwehd.nrc.gov/Public_HLW-EHD/home.asp), unless

excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in the filing. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filing and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. The ADAMS accession number for the ADAMS package containing the DOE application is ML081560400. The ADAMS accession number for the ADAMS package containing DOE's Final Environmental Impact Statement is ML032690321, and the accession number for the ADAMS package containing DOE's Final Supplemental Environmental Impact Statement is ML081750191. The ADAMS accession number for the ADAMS package containing DOE's Final Rail Corridor Supplemental EIS and Rail Alignment EIS is ML082460227. The application is also available at <http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

### III. Additional Matters Pertaining to the Hearing and Intervention Requests

#### A. Standing as of Right

Pursuant to 10 CFR 2.309(d)(2)(iii), the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which the geologic repository operations area is located, and by any affected Federally-recognized Indian Tribe, as defined in 10 CFR Part 63, if the contention requirements in 10 CFR 2.309(f) are satisfied with respect to at least one contention. Section 2.309(d)(2) specifies that such State, affected Federally-recognized Indian Tribe, and local governmental body need not

address the standing requirements in 10 CFR 2.309(d).

In LBP-08-10, the Advisory PAPO Board requested that the Commission clarify whether an "affected unit of local government" (AULG), as defined in section 2 of the NWPAA, as amended (42 U.S.C. 10101), also need not address the standing requirements of section 2.309(d). Any AULG seeking party status shall be considered a party to this proceeding, provided that it files at least one admissible contention in accordance with 10 CFR 2.309. An AULG need not address the standing requirements under that section.

#### B. Environmental Contentions

In addition to meeting NRC's regular contention admissibility requirements in 10 CFR 2.309(f), environmental contentions addressing any DOE environmental impact statement or supplement must also conform to the requirements and address the applicable factors outlined in 10 CFR 51.109 governing NRC's adoption of DOE's environmental impact statements. The requirements of section 51.109 should be applied consistent with *Nuclear Energy Institute, Inc. v. EPA*, 373 F.3d 1251, 1313-14 (D.C. Cir. 2004), a court decision discussing section 51.109, and consistent with the Commission's denial of the State of Nevada's petition to amend section 51.109 (73 FR 5762; January 31, 2008), and the Office of the General Counsel's subsequent letter clarifying the Commission's denial (Letter from Bradley W. Jones, Assistant General Counsel to Martin G. Malsch, dated March 20, 2008, ADAMS accession number ML080810175). Under 10 CFR 51.109(c), the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate. Under 10 CFR 51.109(a)(2), a presiding officer considering environmental contentions should apply NRC "reopening" procedures and standards in 10 CFR 2.326 "to the extent possible."

#### C. Hearing Procedures

The construction authorization hearing will be conducted by one or more presiding officers (licensing boards) that will be designated by the Chief Judge of the Atomic Safety and Licensing Board Panel. The Commission anticipates and authorizes the establishment of multiple licensing boards throughout the proceeding. Notice as to the membership of the

board(s) will be published at a later date.

In 1991, the Commission suggested that it would use the notice of hearing for a high-level waste (HLW) proceeding to announce detailed case management procedures (56 FR 7787, 7793-94 (February 26, 1991)). In the intervening years, however, the Atomic Safety and Licensing Board Panel has engaged in extensive case management planning for this proceeding. The Commission therefore believes that the presiding officer(s) in this proceeding will be in the best position to establish and efficiently resolve case management issues, some of which the Commission-authorized Advisory PAPO Board resolved in LBP-08-10.

#### D. Scope of the Hearing

In accordance with 10 CFR 2.1027, in any initial decision on the application for construction authorization, the presiding officer shall make findings of fact and conclusions of law on, and otherwise give consideration to, only material issues put into controversy by the parties and determined to be litigable in the proceeding. The Commission has determined that the scope of the adjudicatory proceeding on safety, security, or technical issues is limited to litigable contested issues. See *State of Nevada*; Denial of Petition for Rulemaking, Docket No. PRM-2-14, available at ADAMS accession number ML082900618. The presiding officer has no authority or duty to resolve uncontested issues in those areas. See 10 CFR 2.1023(c)(2) and 10 CFR 2.1027.

Notwithstanding the provisions in 2.1023(c)(2) and 10 CFR 2.1027, the presiding officer shall make the environmental findings required by 10 CFR 51.109(e), even on uncontested issues, "to the extent it is not practicable to adopt the environmental impact statement prepared by the Secretary of Energy."

#### E. Participation by a Non-Party

A person who is not a party may be permitted to make a limited appearance statement by making an oral or written statement of his or her position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

### IV. Access to Non-public information

Those petitioners who seek access to non-public information must follow the access requirements contained in the PAPO Board's Third Case Management Order (August 30, 2007), available at ADAMS accession number

ML072420327. This and other case management orders issued by the PAPO Board govern protection of various categories of protected and privileged information. The Board's case management orders are available on the high-level waste electronic hearing docket, Docket No. PAPO-00, at [http://hlwehd.nrc.gov/Public\\_HLW-EHD/home.asp](http://hlwehd.nrc.gov/Public_HLW-EHD/home.asp), under HLW-EHD, folder titled PAPO\_HLW, subfolder titled Orders\_PAPO.

#### V. Motions

To avoid unnecessary disputes and filings, a party who files a motion must certify, pursuant to 10 CFR 2.323, that he or she has made a reasonable effort to consult with counsel for the applicant and counsel for the NRC staff, as well as other interested counsel or litigants, in an effort to resolve the matter in advance of filing the motion. Motions must also meet all other section 2.323 requirements.

#### VI. Revised Hearing Schedule Milestones

In CLI-08-18 (August 13, 2008), available at ADAMS accession number ML082261241, the Commission granted the State of Nevada, as well as any other petitioner, an additional thirty (30) days in which to file a petition to intervene, or a petition for status as an interested government participant, in this proceeding. In addition, the Commission proposed further modifications to the schedule codified in 10 CFR Part 2, Appendix D.

The Commission invited any party or potential party participating in the matters before the PAPO Board to provide comments on certain additional proposed extensions of time. The Commission also sought the views of the Atomic Safety and Licensing Board Panel on the reasonableness of current and proposed time frames. The Commission has considered the comments received, and has determined that the revised schedule below will replace certain hearing milestones set forth in Appendix D to 10 CFR Part 2.

The Commission hereby doubles the time permitted to file answers and replies, pursuant to 10 CFR 2.309(h)(1) and (2), respectively, to fifty (50) and fourteen (14) days, respectively. The Commission also extends the period for the First Prehearing Conference from eight (8) to sixteen (16) days after the deadline for filing replies, and extends the period for issuance of the First Prehearing Conference Order from thirty (30) to sixty (60) days after the First Prehearing Conference. The revised Appendix D schedule, reflected in the table below, replaces only the

milestones up to, and including, the First Prehearing Conference Order. The presiding officer retains authority to grant extensions of time of no more than fifteen days, and the Commission retains authority to grant extensions of longer than fifteen days, but in either case the litigant seeking the extension must follow the requirements of 10 CFR 2.1026.

#### PARTIALLY REVISED APPENDIX D SCHEDULE

Day	Action
0 .....	Federal Register Notice of Hearing.
60 .....	Petition to intervene/request for hearing, w/contentions.
110 ....	Answers to intervention and interested government participant Petitions.
124 ....	Petitioner's response to answers.
140 ....	First Prehearing Conference.
200 ....	First Prehearing Conference Order identifying participants in proceeding, admitted contentions, and setting discovery and other schedules.

The regulatory requirements governing the balance of the Appendix D schedule remain unchanged.

#### VII. September 9, 2008, Petition

On September 9, 2008, the State of Nevada submitted to the Commission a "petition" directed to the content of this hearing notice.<sup>2</sup> In this petition, Nevada argues that the Commission cannot issue a notice of hearing unless it first resolves "at least three important legal and procedural issues."<sup>3</sup>

Nevada's first issue, now partially mooted, is the lack of final Environmental Protection Agency (EPA) standards and implementing NRC rules for the post-10,000 year period. The EPA has now established post-10,000 year standards, and the Staff is developing implementing regulations.<sup>4</sup>

<sup>2</sup> *Petition to Publish a Fair and Reasonable Notice of Hearing on DOE's Yucca Mountain Application* (Sept. 9, 2008), available at ADAMS accession number ML082550289 (September 9 Petition). The procedural identity of Nevada's "petition" is not obvious. The Commission addresses the issues Nevada raises as part of this notice of hearing solely as a matter of expedience since they touch on topics the Commission already addresses independently.

Both DOE and the NRC Staff responded to the September 9 Petition. See U.S. Department of Energy Response to State of Nevada "Petition to Publish a Fair and Reasonable Notice of Hearing on DOE's Yucca Mountain Application" (Sept. 19, 2008); NRC Staff's Response to the State of Nevada's Petition to Publish a Fair and Reasonable Notice of Hearing on DOE's Yucca Mountain Application (Sept. 19, 2008).

<sup>3</sup> September 9 Petition at 3.

<sup>4</sup> Final Rule, Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada 73 FR 61,256 (October 15, 2008).

Nevada argued that potential parties cannot draft contentions based upon standards that have not been finalized. As a possible remedy, Nevada proposed that today's notice of hearing include a delay—essentially a bifurcation of contention-filing deadlines—with respect to all issues related to the EPA standards and the NRC's implementing rules until some date to be determined after the standards and rules are issued. Nevada argued alternatively that this delay could be avoided if the Commission declined to be bound by its Staff's decision to docket the application.

The Commission recognizes Nevada's concern but does not believe Nevada's extraordinary remedies are necessary, especially since the EPA has now issued the relevant standards, and the NRC's regulations are in preparation. Under the NRC's ordinary practice, Nevada and other hearing petitioners are free to file contentions arguing that the Commission may not authorize construction in the absence of implementing NRC rules. And they are also free to file contentions maintaining that DOE's application does not meet EPA's standards. Such contentions would require no change in the contention-filing schedule set out in CLI-08-18. Nevada or other hearing petitioners may amend their "EPA standards"-related contentions later, after the NRC's implementing rules are issued, if the new NRC rules establish fresh grounds for contentions. Under the unusual circumstances of this case, where controlling agency rules have been delayed, and to ensure that no one is prejudiced, any contentions so amended—on EPA standards-related issues only—will be deemed timely for admissibility purposes if filed within sixty days after the **Federal Register** publication of the NRC rules implementing the new EPA standards.<sup>5</sup>

The second issue Nevada raises in its September 9 Petition concerns a petition for rulemaking it filed regarding the specification of issues for the mandatory hearing portion of this proceeding.<sup>6</sup>

<sup>5</sup> NRC rules ordinarily call on licensing boards to balance several factors in deciding whether to allow late-filed (or amended) contentions. See 10 CFR 2.309(c)(i)-(viii). In the case of the yet-to-issue NRC rules, however, the Commission is dispensing in advance with all "late-filed" factors except the "good cause" factor. It is obvious even now that promptly-filed and well-pled contentions based on new, previously unavailable NRC rules—rules that will govern important aspects of NRC's safety review—must be admitted for hearing. There plainly would be "good cause" for filing such contentions late, and no conceivable justification for rejecting them at the threshold.

<sup>6</sup> Petition by the State of Nevada for Rulemaking to Specify Issues for the Yucca Mountain Mandatory Hearing (June 19, 2007).

That petition has now been ruled on, and the Commission's rulemaking decision is reflected in the discussion of the scope of the hearing addressed in Section III.D, above.<sup>7</sup>

Finally, the third issue Nevada raises in its September 9 Petition concerns the status of security clearances and access to classified information in the Yucca Mountain construction authorization application. Nevada argues that its representatives have not been informed of decisions on their security clearances and on access to classified information, "notwithstanding timely applications," so no contentions based on classified information can be prepared.<sup>8</sup> To remedy this, Nevada again asks for a bifurcation of contention-filing deadlines.

It is the Commission's understanding that, as of the end of July, one of Nevada's security clearance applications was complete and was being processed, another application was incomplete, and two applications had been withdrawn.<sup>9</sup> From this, the Commission concludes that the timeliness of Nevada's security clearance applications is factually ambiguous. Moreover, it is not immediately clear that the perceived problem could not be remedied by the provision of redacted versions of classified documents that could provide a basis for the formulation of contentions before the security clearance application reviews are completed. The Commission directs the PAPO Board to resolve both of these questions.

*It is so ordered.*

Dated at Rockville, Maryland, this 17th day of October, 2008.

For the Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E8-25293 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Economic Simplified Boiling Water Reactor (ESBWR); Corrected Notice of Meeting (Corrected To Note New Meeting Times)

The ACRS Subcommittee on the ESBWR will hold a meeting on October 21-22, 2008, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric-Hitachi (GEH) Nuclear Energy and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

**Tuesday, October 21, 2008—1 p.m.–5 p.m.**

**Wednesday, October 22, 2008—8:30 a.m.–12 noon.**

The Subcommittee will review Chapter 14 of the Safety Evaluation Report with Open Items associated with the ESBWR Design Certification Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GEH, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Harold J. Vandermolen, (Telephone: 301-415-6236) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 14, 2008.

**Cayetano Santos,**

*Branch Chief.*

[FR Doc. E8-25141 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7001, 70-7002]

### Notice of Renewal of Certificates of Compliance GDP-1 and GDP-2 for the U.S. Enrichment Corporation, Paducah and Portsmouth Gaseous Diffusion Plants, Paducah, KY and Portsmouth, OH

**ACTION:** Notice and issuance of a Director's Decision renewing the Certificates of Compliance for the United States Enrichment Corporation (USEC) allowing continued operation of the gaseous diffusion plants (GDPs), at Paducah, KY, and Portsmouth, OH.

#### FOR FURTHER INFORMATION CONTACT:

Michael Raddatz, Enrichment and Conversion Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 492-3108; Fax: (301) 492-3363; or by e-mail: [Michael.Raddatz@nrc.gov](mailto:Michael.Raddatz@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is hereby issuing a director's decision authorizing the renewal of the certificates of compliance for the two GDPs located near Paducah, KY, and Portsmouth, OH, for the USEC, allowing continued operation of these plants. The renewal of these certificates for the GDPs covers a 5-year period. USEC submitted individual renewal requests for both the Paducah and Portsmouth GDPs on April 10, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 76.31.

Pursuant to 10 CFR 76.53, the NRC consulted with and requested written comments on the renewal application from the U.S. Environmental Protection Agency (EPA) and the Department of Energy (DOE). EPA responded in a letter dated September 15, 2008, (ML082840196) stating that it had thoroughly reviewed the USEC application to ensure that USEC had provided an accurate environmental compliance overview. The EPA found that both the local and regional EPA regulators had adequately inspected the

<sup>7</sup> See State of Nevada; Denial of Petition for Rulemaking, Docket No. PRM-2-14, available at ADAMS accession number ML082900618.

<sup>8</sup> September 9 Petition at 6.

<sup>9</sup> See Letter from Aby Mohseni, Deputy Director, Licensing and Inspection Directorate, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards to Robert R. Loux, Executive Director, Agency for Nuclear Projects, Office of the Governor, State of Nevada (July 31, 2008), available at ADAMS accession number ML081910097.

**AFFIDAVIT OF MARY NUGENT**

I, Mary F. Nugent, President of Nevada Security Solutions, LLC hereby depose and state as follows:

1. Nevada Security Solutions, LLC (NSS) is a duly Nevada registered Limited Liability Company located in Las Vegas in good standing.

2. NSS is an information technology company staffed with personnel experienced in rapidly providing information technology operations and web service network infrastructure.

3. Since February 2007, NSS has done extensive investigation, and due diligence on the present state of Nevada's emergency and critical infrastructure protection capabilities in addition to an evaluation of the existing voice and data communication capabilities among government agencies within the State of Nevada. This due diligence and evaluation centered on the technology requirements analysis and the costs associated with the establishment and operation of a state-wide interoperable communication incident management system allowing voice, data, and video communications between and among all appropriate agencies in the state and federal government.

4. On September 24, 2008, the Nevada State Legislature Audit Subcommittee, released its own report on the present capabilities of Nevada's Department of Emergency Management Division (DEM) to effectively respond to emergency situations. The Subcommittee's findings were:

a. That DEM has not demonstrated adequate oversight of, nor coordination with, other entities in preparation of their emergency operation plans or emergency response plans;

b. That "NRS 414 and the federal Department of Homeland Security call for the Division to coordinate efforts on the State, its political subdivisions, private

organizations, and tribal nations. However, the Division could not locate plans for 53 of 95 state agencies, local jurisdictions, charter schools and school districts, resort hotels, and tribal nations from a random sample of these types of entities. In addition there was little documentation in the files showing the division worked with the other entities to encourage them to prepare or update their plans”(Minutes of the Meeting of the Audit Subcommittee of the Legislative Commission, September 24, 2008; Page 19 of 41).

c. Auditors found the Division did not have a process to track emergency equipment that can quickly identify and provide its location that could help minimize the impact of disaster. (*ibid.* page 21 of 41)

5. In regard to the State of Nevada’s Legislative Commissions Audit Subcommittee report and similar findings and public statements of the Nevada Homeland Security Commission members on the state of emergency preparedness for natural or manmade medical incident emergency response to include medical emergency treatment plans and procedures, evacuation policies, hazardous material containment operational plans and investigation and evaluation, the following is an overview of the findings:

a. There is presently minimal voice or data communication interoperability between or among the non-law enforcement emergency first responders and their related facilities within the individual counties of the State of Nevada. Additionally, the interconnectivity for rapid dissemination and collection of information, emergency equipment inventory, medical emergency procedures and plans between and among first responder entities of the seventeen counties of Nevada and, the agencies of, and related facilities of the State of Nevada, or between and among Nevada’s entities and the emergency managers and related facilities of the U.S. Government is further hindered by the preponderance of stove-piped legacy systems, coupled with a wide range of various IT formats and types of technology hardware presently deployed.

b. There is a clear and pressing need for a rapidly deployed interoperable communication system and database resource library for state-wide information sharing

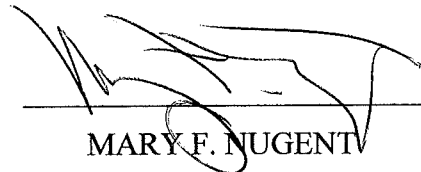


that can serve as a primary component of effective protection of the health and welfare of the public in connection with shipments of critical and hazardous material to the proposed Yucca Mountain repository in Nye County, Nevada as they pass through multiple counties throughout the State of Nevada.

c. Further, without this interoperable communication network with its unclassified emergency medical and equipment database resource library, the State of Nevada is not currently ready for commencement of shipping hazardous materials into the State of Nevada.

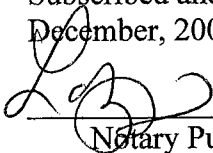
6. NSS has estimated a multifunctional network and data integration center capable of interoperable communications statewide which can be developed and implemented within nine months of contract award at an estimated cost for the acquisition and implementation of such a system and the monthly service fee necessary for its operation, upgrade, and maintenance that would not exceed \$7 Million for establishment, and \$2.5 million to \$3 million per year to operate.

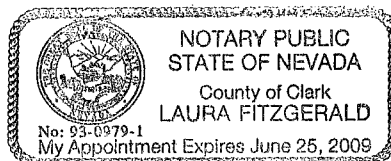
DATED: December 18, 2008

  
MARY F. NUGENT

State of Nevada )  
                                  )ss.  
County of Clark )

Subscribed and sworn to before me this 18 day of  
December, 2008

  
\_\_\_\_\_  
Notary Public



ATTACHMENT 8

**AFFIDAVIT OF ALAN F. KALT**

I, Alan F. Kalt, being first duly sworn, hereby depose and state as follows:

1. I am a citizen of the United States, and a resident of Churchill County, Nevada.
2. I have been the Churchill County Comptroller for the last 16 years. I coordinate the County's Yucca Mountain Project oversight for Churchill County.
3. I am familiar with the presently available resources and capabilities of all existing agencies situated within the County charged with the protection of the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents.
4. In addition, I have evaluated the additional resources which will be required within the County to protect the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents in connection with shipments of truck casks of spent nuclear fuel and high level waste to the proposed Yucca Mountain repository in Nye County, Nevada.
5. The following figures reflect the current resources described in Paragraph 3 above, and the estimated required additional resources described in Paragraph 4 above:

<b>NUMBER OF PERSONNEL</b>	<b>CURRENT RESOURCES</b>	<b>REQUIRED ADDITIONAL RESOURCES</b>
Sheriff's Department	50 FTE's	2 Deputies
Fire Department	45 Volunteers	4 Full-Time
Emergency Medical Techs	29, 17 Full-Time, 12 Part-Time	2 Full-Time
Other-Planning, Mgt. and Training Coordination	Emergency Mgt. Director	Increased time dedicated to this effort
Training Reimbursement	On-going	200 Days

<b>VEHICLES EQUIPMENT AND FACILITIES</b>	<b>CURRENT EQUIPMENT AND FACILITIES</b>	<b>REQUIRED ADDITIONAL EQUIPMENT AND FACILITIES</b>
Sheriff's Department	See detailed Sheriff's Dept Inventory List	1- 4 Wheel Drive SUV with Trailer equipped with radiation monitor
FIRE DEPARTMENT (3 Fire Stations in community)	See detailed Fire Dept Inventory List	1 - New Custom Chassis Pumper Fire Truck.
Emergency Medical (1 ambulance facility in our community)	4-ambulances	1 - New Type I Ambulances equipped with vehicle mounted radiation monitor
RADIATION DETECTION EQUIPMENT	0 – Hand held	30 - Wireless, Multi-channel, compact transportable Multi-Gas Radiation Monitors
HOUSING FACILITY FOR FIREFIGHTERS AND EMT'S (Non-volunteers)	1 facility near Banner Churchill Community Hospital	1 – New Fire Station for full-time firefighters and EMT's including response equipment with full bio hazard/cleaning room for hazardous materials
FIRST RESPONDER ROAD RESCUE VEHICLE	0	1 – New First Responder Road Rescue vehicle with water and foam pumping capabilities



facilities of the U.S. Government. Such interoperability is a vital, critical, necessary and required component of effective protection of the health and welfare of the public in connection with shipments of truck casks of SNF and HLW to the proposed Yucca Mountain repository in Nye County, Nevada as they pass through multiple counties throughout the State of Nevada. As set forth in the AFFIDAVIT OF MARY NUGENT which is also submitted in connection with this contention, the estimated cost for the acquisition and implementation of such system for Statewide use, in today's dollars, is \$7 Million, and the annual operation and maintenance costs for the system, in today's dollars, is \$2.5 to \$3 million.

9. The County cannot afford to bear the estimated operational or capital costs of the required additional personnel, vehicles, equipment and facilities described above.

10. There is no recognition or analysis of the matters set forth above and no provision for mitigation of the environmental impacts and effects described above in the Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F-SI) ("SEIS") or the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F) ("FEIS").

11. It is not practicable for the Nuclear Regulatory Commission to adopt the Department of Energy FEIS or SEIS, based upon the significant and substantial new information and new considerations set forth above, which render the FEIS and the SEIS inadequate.

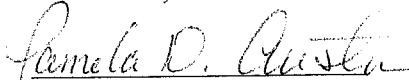
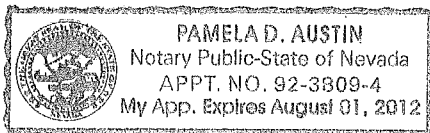
DATED: December 15, 2008



Alan F. Kalt, Churchill County Comptroller

State of Nevada       )  
                                  ) ss.  
County of Churchill County)

Subscribed and sworn to before me this 15<sup>th</sup> day of  
December, 2008

  
Notary Public

ATTACHMENT 9

**AFFIDAVIT OF KEN ELGAN**

I, Ken Elgan, being first duly sworn, hereby depose and state as follows:

1. I am a citizen of the United States, and a resident of Esmeralda County, Nevada.

2. I have been employed by the County for 14 years, and hold the position Esmeralda County Sheriff

3. I am familiar with the presently available resources and capabilities of all existing agencies situated within the County charged with the protection of the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents.

4. In addition, I have evaluated the additional resources which will be required within the County to protect the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents in connection with shipments of truck casks of spent nuclear fuel and high level waste to the proposed Yucca Mountain repository in Nye County, Nevada.

5. The following figures reflect the current resources described in Paragraph 3 above, and the estimated required additional resources described in Paragraph 4 above:

<b>NUMBERS OF PERSONNEL</b>	<b>CURRENT RESOURCES</b>	<b>REQUIRED ADDITIONAL RESOURCES</b>
<b>SHERRIF DEPARTMENT</b>	<b>18</b>	<b>3 Deputies</b>
<b>FIRE DEPARTMENT</b> (Volunteers in 4 communities)	<b>33</b>	<b>6 (Non-volunteer hazardous material fire fighters)</b>
<b>EMERGENCY MEDICAL TECHS (Volunteer EMT's in 4 communities)</b>	<b>24</b>	<b>4 (Non-volunteer hazardous material EMT's)</b>

<b>VEHICLES EQUIPMENT AND FACILITIES</b>	<b>CURRENT EQUIPMENT AND FACILITIES</b>	<b>REQUIRED ADDITIONAL EQUIPMENT AND FACILITIES</b>
<b>SHERRIF DEPARTMENT</b>	<b>6 - Automobiles</b> <b>0 - Off road 4 wheel vehicles</b>	<b>1 – 4 wheel passenger vehicle</b> <b>2 – 4 wheel quad ATV vehicles</b>
<b>FIRE DEPARTMENT (4 Fire Halls in 4 communities)</b>	<b>11 – Trucks</b>	<b>2 - New Custom Chassis Pumper Fire Trucks fully equipped including one truck with a 100 ft. platform aerial</b>
<b>EMERGENCY MEDICAL (3 Ambulance facilities in 3 communities)</b>	<b>6 - Ambulances</b>	<b>3 - New Type I Ambulances equipped with vehicle mounted radiation monitor</b>
<b>RADIATION DETECTION EQUIPMENT</b>	<b>6 – Hand held</b>	<b>22 - Wireless, Multi-channel, compact transportable Multi-Gas Radiation Monitors</b>
<b>RADIATION PROTECTION SUITS FOR FIRE AND EMT PERSONEL</b>	<b>0</b>	<b>114 - Radiation Protection Suits</b>
<b>HOUSING FACILITY FOR FIREFIGHTERS AND EMT'S (Non-volunteers)</b>	<b>0</b>	<b>1 – New Fire Hall for housing firefighters and EMT's including response equipment with full bio hazard/cleaning room for hazardous materials</b>
<b>FIRST RESPONDER ROAD RESCUE VEHICLE</b>	<b>0</b>	<b>1 – New First Responder Road Rescue vehicle with water and foam pumping capabilities</b>
<b>MOBILE COMMAND CENTER</b>	<b>0</b>	<b>1 – New mobile fully self contained command center</b>
<b>PORTABLE HAZARDOUS MATERIAL DECON UNIT</b>	<b>1 – 10 year old</b>	<b>1 – State of the art portable hazardous material decontamination unit</b>



6. The estimated annual operating costs, in today's dollars, for the Required Additional Personnel is approximately \$650,000.00

7. The estimated capital costs, in today's dollars, for the Required Additional Vehicles, Equipment and Facilities, and for the annual maintenance, operation and replacement thereof is as follows:

Initial Capital Cost	\$2,983,000.00
Annual Maintenance	\$74,575.00 (estimated at .025%)
Annual Operation	\$50,000.00 (Annual operation dependant on undetermined emergency deployment)
Annual Replacement	\$298,000.00 (10% annual depreciation estimate)

8. There is presently no voice or data communication interoperability between or among the emergency responders and their related facilities within the County, or between and among the first responders and their related facilities of the County, the first responders and related facilities of the other counties of Nevada, the first responders and related facilities of agencies the State of Nevada and the first responders and related facilities of the U.S. Government. Such interoperability is a vital, critical, necessary and required component of effective protection of the health and welfare of the public in connection with shipments of truck casks of SNF and HLW to the proposed Yucca Mountain repository in Nye County, Nevada as they pass through multiple counties throughout the State of Nevada. As set forth in the AFFIDAVIT OF MARY NUGENT which is also submitted in connection with this contention, the estimated cost for the acquisition and implementation of such system for Statewide use, in today's dollars, is \$7 Million, and the annual operation and maintenance costs for the system, in today's dollars, is \$2.5 to \$3 million.

9. The County cannot afford to bear the estimated operational or capital costs of the required additional personnel, vehicles, equipment and facilities described above.

10. There is no recognition or analysis of the matters set forth above and no provision for mitigation of the environmental impacts and effects described above in the Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F-SI) ("SEIS") or the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F) ("FEIS").


11. It is not practicable for the Nuclear Regulatory Commission to adopt the Department of Energy FEIS or SEIS, based upon the significant and substantial new information and new considerations set forth above, which render the FEIS and the SEIS inadequate.

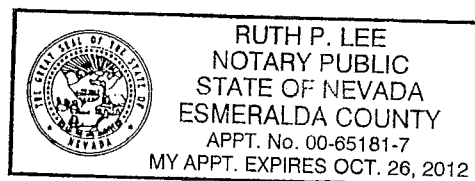
DATED: December 11, 2008



State of Nevada     )  
                                  ) ss.  
County of Esmeralda )

Subscribed and sworn to before me this 11 day of  
December, 2008

  
Notary Public



**AFFIDAVIT OF GENE P. ETCHEVERRY**

I, Gene P. Etcheverry, being first duly sworn, hereby depose and state as follows:

1. I am a citizen of the United States, and a resident of Lander County, Nevada (the "County").

2. I have been employed by the County for 2 ½ years, and hold the position of Lander County Executive Director, Director of Emergency Medical Services, and chief administrator overseeing the operations of the Battle Mountain Fire Department.

3. I am familiar with the presently available resources and capabilities of all existing agencies situated within the County charged with the protection of the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents.

4. In addition, I have evaluated the additional resources which will be required within the County to protect the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents in connection with shipments of truck casks of spent nuclear fuel and high level waste to the proposed Yucca Mountain repository in Nye County, Nevada. The need for additional resources was initially identified in the 2007 and 2000 Lander County Emergency Response Assessment and Impact Analysis of Local Capabilities LND0000000068 and LDN0000000014. The associated costs of additional resources described in LND0000000068 and LDN0000000014 needs to be adjusted for current costs and volume of shipments.

5. The following figures reflect the current resources described in Paragraph 3 above, and the estimated required additional resources not identified in LND 0000000068 and LDN0000000014 described in Paragraph 4 above:

<b>NUMBERS OF PERSONNEL</b>	<b>CURRENT RESOURCES</b>	<b>REQUIRED ADDITIONAL RESOURCES</b>
<b>Sheriff's Department</b>	<b>27</b>	<b>2 Deputies</b>
<b>Fire Department</b>	<b>42-volunteers</b>	<b>4 (full-time fire fighters)</b>
<b>Emergency Medical Techs</b>	<b>12-volunteers</b>	<b>4 (full-time hazardous material EMT's)</b>
<b>Other-Planning, Mgt. and Training Coordination</b>	<b>1 volunteer emergency mgt. director</b>	<b>As described in LND000000068 and LND000000014 adjusted for current cost and volume of shipments</b>

<b>VEHICLES EQUIPMENT AND FACILITIES</b>	<b>CURRENT EQUIPMENT AND FACILITIES</b>	<b>REQUIRED ADDITIONAL EQUIPMENT AND FACILITIES</b>
<b>Sheriff's Department</b>	<b>24 Vehicles</b>	<b>1 – 4 wheel passenger vehicle.</b>
<b>FIRE DEPARTMENT (3 Fire Stations in 3 communities)</b>	<b>14 – Trucks</b>	<b>1 - New Custom Chassis Pumper Fire Truck.</b>
<b>EMERGENCY MEDICAL (3 Ambulance facilities in 3 communities)</b>	<b>3 - Ambulances</b>	<b>1 - New Type I Ambulances equipped with vehicle mounted radiation monitor</b>
<b>RADIATION DETECTION EQUIPMENT</b>	<b>0 – Hand held</b>	<b>30 - Wireless, Multi-channel, compact transportable Multi-Gas Radiation Monitors</b>
<b>HOUSING FACILITY FOR FIREFIGHTERS AND EMT'S (Non-volunteers)</b>	<b>0</b>	<b>1 – New Fire Station for full-time firefighters and EMT's including response equipment with full bio hazard/cleaning room for hazardous materials</b>
<b>FIRST RESPONDER ROAD RESCUE VEHICLE</b>	<b>0</b>	<b>1 – New First Responder Road Rescue vehicle with water and foam pumping capabilities</b>
<b>PORTABLE HAZARDOUS MATERIAL DECON UNIT</b>	<b>0</b>	<b>1 – State of the art portable hazardous material decontamination unit</b>
<b>Hospital Improvements</b>	<b>0</b>	<b>Deluge Shower and isolation room and Regional ID Badge System.</b>
<b>Communication Equipment</b>		<b>As described in LND000000068 and LND000000014 adjusted for current cost and volume of shipments</b>
<b>Other Emergency Response Equipment</b>		<b>As described in LND000000068 and LND000000014 adjusted for current cost and volume of shipments</b>

6. The estimated annual operating costs, in today's dollars, for the Required Additional Personnel is approximately \$870,000 and the planning/management and training requirement costs as described in LND0000000068 and LND0000000014 adjusted for current cost and volume of shipments.

7. The estimated capital costs, in today's dollars, for the Required Additional Vehicles, Equipment and Facilities, and for the annual maintenance, operation and replacement thereof is as follows:

Initial Capital Cost	\$1,875,000.00
Annual Maintenance	\$46,875.00 (estimated at .025%)
Annual Operation	\$75,000.00 (Annual operation dependant on undetermined emergency deployment)
Annual Replacement	\$187,500.00 (10% annual depreciation estimate)

and the communication equipment and response equipment costs as described in LND0000000068 and LND0000000014 adjusted for current cost and volume of shipments.

8. There is presently no voice or data communication interoperability between or among the emergency responders and their related facilities within the County, or between and among the first responders and their related facilities of the County, the first responders and related facilities of the other counties of Nevada, the first responders and related facilities of agencies the State of Nevada and the first responders and related facilities of the U.S. Government. Such interoperability is a vital, critical, necessary and required component of effective protection of the health and welfare of the public in connection with shipments of truck casks of SNF and HLW to the proposed Yucca Mountain repository in Nye County, Nevada as they pass through multiple counties throughout the State of Nevada. As set forth in the AFFIDAVIT OF MARY NUGENT which is also submitted in connection with this contention, the estimated cost for the

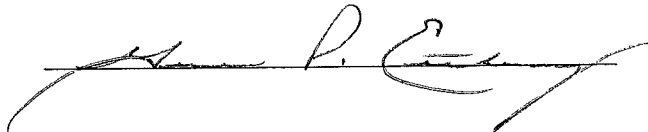
acquisition and implementation of such system for Statewide use, in today's dollars, is \$7 Million, and the annual operation and maintenance costs for the system, in today's dollars, is \$2.5 to \$3 million.

9. The County cannot afford to bear the estimated operational or capital costs of the required additional personnel, vehicles, equipment and facilities described above.

10. There is no recognition or analysis of the matters set forth above and no provision for mitigation of the environmental impacts and effects described above in the Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F-SI) ("SEIS") or the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F) ("FEIS").

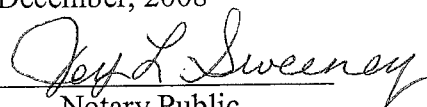
11. It is not practicable for the Nuclear Regulatory Commission to adopt the Department of Energy FEIS or SEIS, based upon the significant and substantial new information and new considerations set forth above, which render the FEIS and the SEIS inadequate.

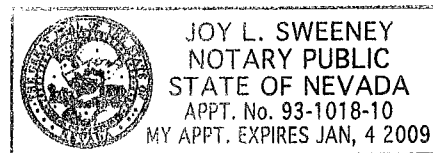
DATED: December 15, 2008



State of Nevada   )  
                              ) ss.  
County of Lander )

Subscribed and sworn to before me this 15<sup>th</sup> day of  
December, 2008

  
Notary Public



**AFFIDAVIT OF EDWARD SMITH**

I, Sheriff Ed Smith, being first duly sworn, hereby depose and state as follows:

1. I am a citizen of the United States, and a resident of Mineral County, Nevada.
2. I have been employed by the County for 27 years, and hold the position of Sheriff.
3. I am familiar with the presently available resources and capabilities of all existing agencies situated within the County charged with the protection of the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents.
4. In addition, I have evaluated the additional resources which will be required within the County to protect the health and safety of the public through response to emergencies, accidents and injuries arising from transportation, vehicular traffic and related accidents in connection with shipments of truck casks of spent nuclear fuel and high level waste to the proposed Yucca Mountain repository in Nye County, Nevada.
5. The following figures reflect the current resources described in Paragraph 3 above, and the estimated required additional resources described in Paragraph 4 above:

CURRENT RESOURCESREQUIRED ADDITIONAL RESOURCESNumbers of Personnel

Sheriff/Police	<u>18</u>	<u>24</u>
Dispatchers	<u>5</u>	<u>4</u>
Emergency Medical Techs	-	-
Fire Department	<u>43 (4 PD)</u>	<u>20 VOL., 6 PD</u>
EMS	<u>29</u>	<u>10 VOL., 6 PD</u>
Emergency Management	<u>1</u>	<u>1</u>
Hazardous Materials	<u>43 OPS Level Vol.</u>	<u>6 PD Tech Level</u>
Medical	<u>104</u>	1- Full time DR. with Hazardous/Radiological Material Training 4- Full time registered Nurses with Hazardous/Radiological Material Training 1- Full time Maintenance Person <u>With proper training</u>

Vehicles, Equipment and Facilities

Sheriff/Police	14 Vehicles 1 Facility  14 Radios 4 Repeaters <u>14 Handheld</u>	6 Vehicles 1 Centralized Communications/ Dispatch Center 3 Base Radio Consoles 4 Repeaters <u>6 Handhelds</u>
Emergency Medical Techs	-	-



Fire Department (4 Communities)	<u>6 Type 1 Pumpers</u> <u>3 Type 6 Apparatus</u>	<u>1 Heavy Rescue</u> 2 Type 1 Pumpers 1 Snorkel <u>All Fully Equipped</u>
EMS (4 Communities)	4 Fire/EMS Stations	1 Station – Hazmat Response Expand 3 Stations
Emergency Management	<u>5 Ambulances</u> 0 (Share w/ FD)	<u>2 Ambulances</u> 1 Complete Emergency Operations Center
Hazmat Operations	<u>0 Vehicles</u> <u>1 Operations Trailer w/ Equip.</u>	<u>1 SUV</u> 1 Hazmat Response W/Decon capability & equipped
Mobile Command Post	0	1 Mobile command <u>Post</u>
Training	<u>Hazmat OPS Level</u>	<u>Hazmat Tech Level</u>
Medical	1 Portable Hazardous <u>Material Decon Unit</u>	1 Radiological/ Hazardous Material Decon Building with State of the art Equipment. 10 Handheld wireless, radiation alert monitors. 20 Wireless multi- Channel, compact Transportable multi-gas Monitors. 50 Radiation protection <u>suits.</u>

6. The estimated annual operating costs, in today's dollars, for the Required Additional Personnel is approximately \$ 1,525,000.00.

7. The estimated capital costs, in today's dollars, for the Required Additional Vehicles, Equipment and Facilities, and for the annual maintenance, operation and replacement thereof is as follows:

Initial Capital Cost	<u>\$ 10,341,500.00</u>
Annual Maintenance	<u>\$ 258,538.00</u>
Annual Operation	<u>\$ 288,000.00</u>
Annual Replacement	<u>\$ 1,034,105.00</u>

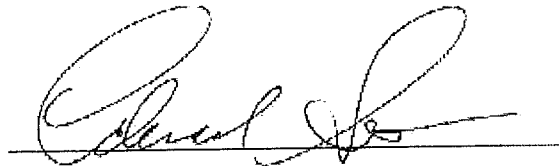
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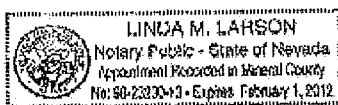
DATED: December 15, 2008



State of Nevada     )  
                              ) ss.  
County of Mineral )

Subscribed and sworn to before me this 15<sup>th</sup> day of  
December, 2008

  
Notary Public





U.S. DEPARTMENT OF ENERGY  
NATIONAL NUCLEAR SECURITY ADMINISTRATION

# RADIOLOGICAL ASSISTANCE PROGRAM (RAP)



The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) has the world's leading scientists, engineers and technicians from over 50 years of managing the nation's nuclear weapons program. When the need arises, DOE is prepared to respond immediately to any type of radiological accident or incident anywhere in the world with the following seven radiological emergency response assets.

**AMS** (Aerial Measuring System) detects, measures and tracks radioactive material at an emergency to determine contamination levels. **ARAC** (Atmospheric Release Advisory Capability) develops predictive plots generated by sophisticated computer models. **ARG** (Accident Response Group) is deployed to manage or support the successful resolution of a U.S. nuclear weapons accident anywhere in the world. **FRMAC** (Federal Radiological Monitoring and Assessment Center) coordinates Federal radiological monitoring and assessment activities with those of state and local agencies. **NEST** (Nuclear Emergency Support Team) provides the nation's specialized technical expertise to the Federal response in resolving nuclear/radiological terrorist incidents.

**RAP (Radiological Assistance Program)** is usually the first NNSA responder for assessing the emergency situation and deciding what further steps should be taken to minimize the hazards of a radiological emergency. **REAC/TS** (Radiation Emergency Assistance Center/Training Site) provides treatment and medical consultation for injuries resulting from radiation exposure and contamination, as well as serving as a training facility.

## INTRODUCTION

The Radiological Assistance Program (RAP), established in the late 1950's, is one of the emergency response resources, or assets, administered by

NNSA. RAP is NNSA's first-responding resource in assessing the emergency situation and advising decision-makers on what further steps could be taken to evaluate and minimize the hazards of a radiological emergency. Specific areas of expertise include assessment, area monitoring, and air sampling, exposure and contamination control.



RESPOND ASSESS ADVISE



U.S. DEPARTMENT OF ENERGY  
NATIONAL NUCLEAR SECURITY ADMINISTRATION

### MISSION

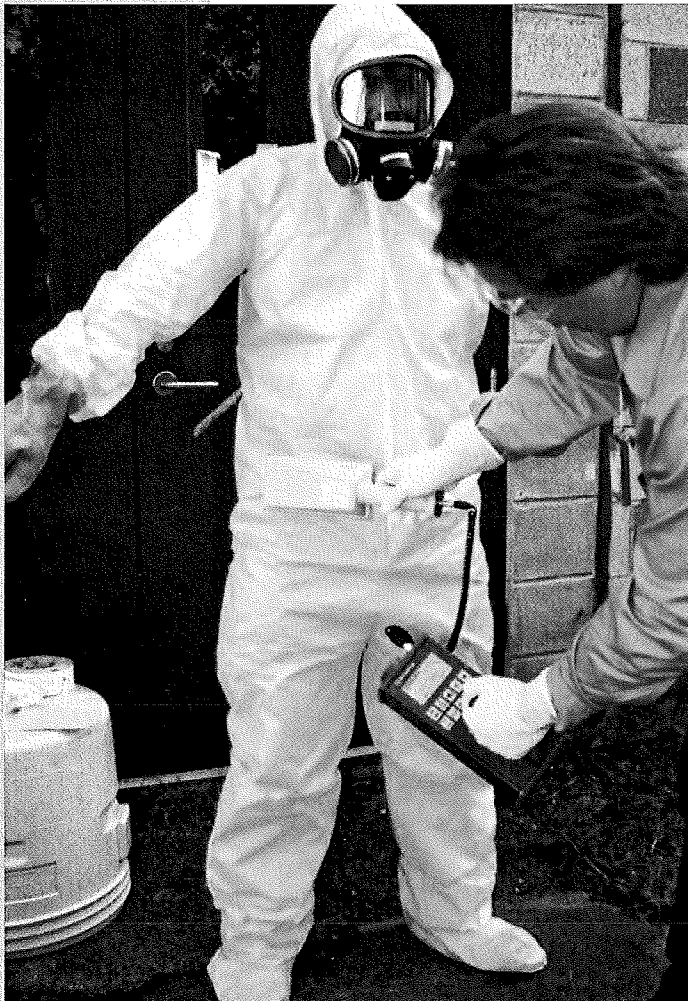
The RAP mission is to provide a flexible, around the clock response capability to Federal agencies, state, Tribal, and local governments, and to private businesses or individuals for incidents involving radiological materials. RAP provides around the clock response capability to radiological emergencies.

### CAPABILITIES

RAP is capable of providing assistance in all types of radiological incidents. Requests for assistance may relate to facility or transportation accidents involving radiation or radioactive material. The accident may involve fire, personal injury, contamination, and real or potential hazards to the public. RAP's support ranges from giving technical information or advice over the telephone to sending

highly trained people and state-of-the-art equipment to the accident site to help identify and minimize any radiological hazards.

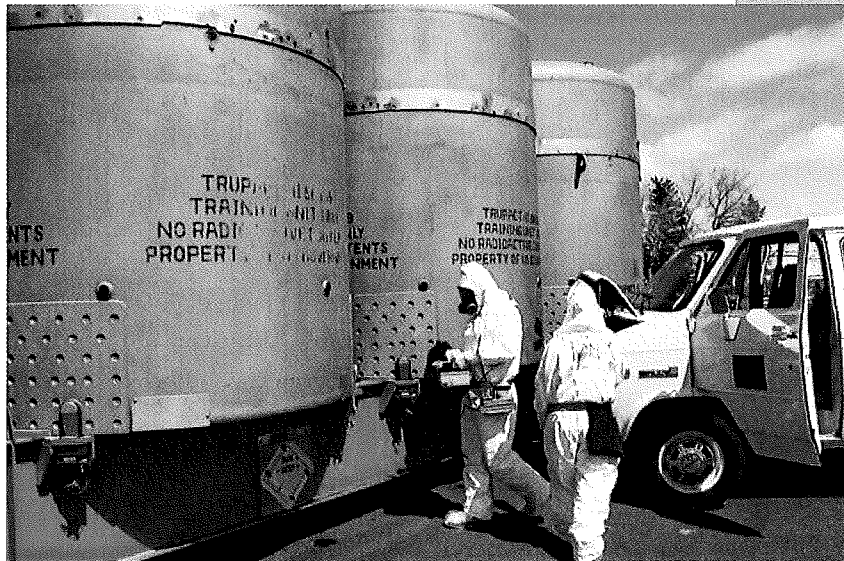
RAP is implemented on a regional basis and has eight Regional Coordinating Offices (RCOs) in the U.S. The eight RAP regional offices (Regions 1 through 8, respectively) are: Brookhaven, NY; Oak Ridge, TN; Savannah River, SC; Albuquerque, NM; Chicago, IL; Idaho Falls, ID; Oakland, CA; and Richland, WA. RAP teams from one region can integrate into and assist RAP teams from other regions. Each RCO has a minimum of three RAP teams. A full RAP team consists of seven members: a team leader, a team captain, four health physics support personnel, and a public information officer. RAP teams may deploy with two or more members; one member is the DOE team leader.



Survey equipment is used to detect and measure radiation.

## STEPS IN THE RAP EMERGENCY RESPONSE

If an emergency occurs, RAP team members normally arrive at the scene within four to six hours after notification and conduct the initial radiological assessment of the area. A RAP response is tailored based on the scale of the event and additional RAP teams and resources can be deployed as necessary. RAP



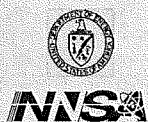
team members are trained in the hazards of radiation and radioactive materials to provide initial assistance to minimize immediate radiation risks to people, property, and the environment. RAP may utilize other NNSA assets, such as AMS, ARAC, or REAC/TS in their response. RAP is able to quickly assess the affected area and advise decision-makers on what actions to take and determine if additional resources are necessary to manage the emergency.

## ABOUT THE EQUIPMENT

RAP's highly trained teams have access to the most advanced radiation detection and protection equipment available. The RAP teams' capabilities and resources include portable field radiation monitoring instrumentation (alpha, beta, gamma, and neutron), generators, mobile laboratories, air sampling and decontamination equipment. Communications and personnel protective equipment and supplies are also available to support the response.

respond  
assess  
advise





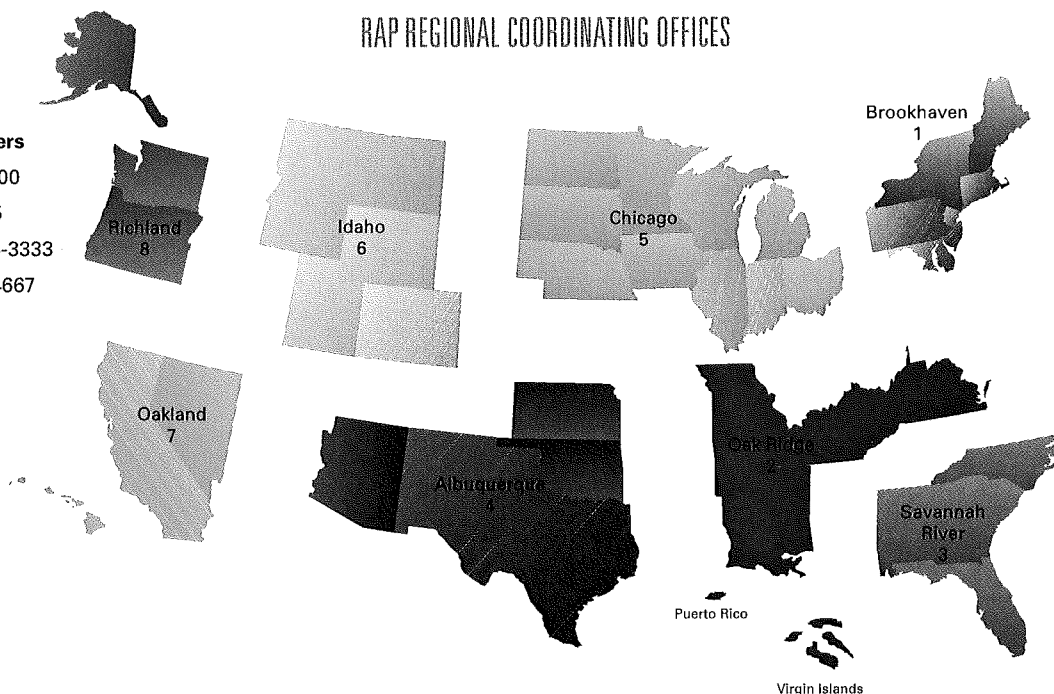
U.S. DEPARTMENT OF ENERGY  
NATIONAL NUCLEAR SECURITY ADMINISTRATION

RAP REGIONAL COORDINATING OFFICES

**Regional Offices — 24 hour numbers**

1. Brookhaven, NY — (631) 344-2200
2. Oak Ridge, TN — (865) 576-1005
3. Savannah River, SC — (803) 725-3333
4. Albuquerque, NM — (505) 845-4667
5. Chicago, IL — (630) 252-4800
6. Idaho Falls, ID — (208) 526-1515
7. Oakland, CA — (925) 422-8951
8. Richland, WA — (509) 373-3800

**Headquarters — (202) 586-8100**



**WHEN THE JOB IS DONE**

RAP's mission is complete when the need for assistance ends or when there are other resources (state, local, Tribal, or commercial services) able to handle the situation. The primary responsibility for an emergency involving radioactive materials remains with the party responsible for the material. Assistance provided by RAP teams does not preempt state, Tribal, or local authority.

**OTHER RAP ACTIVITIES**

In addition to providing radiological emergency assistance, RAP can provide emergency response training to state and local first responders, upon request. Since 1996, RAP has been involved in the Weapons of Mass Destruction First Responder Training Program with the objective of preparing the United States for responding to a terrorist attack involving nuclear, biological or chemical weapons of mass destruction. RAP's unique qualifications make it an integral partner in the success of the Domestic Preparedness Program.

**For more information, contact:**  
Office of Emergency Response  
U.S. Department of Energy  
19901 Germantown Road  
Germantown, MD 20874  
301-903-3558

PARTNERS IN

RESPONSE

**Occupational Risk Consequences of the Department  
of Energy's Approach to Repository Design,  
Performance Assessment and Operation in the Yucca  
Mountain License Application**

1018058

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# **Occupational Risk Consequences of the Department of Energy's Approach to Repository Design, Performance Assessment and Operation in the Yucca Mountain License Application**

1018058

Technical Update, August 2008

EPRI Project Manager

A. Sowder

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# REPORT SUMMARY

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EPRI has discovered several aspects of the U.S Department of Energy (DOE) proposed design and operation of the Yucca Mountain repository that—if implemented as described in the license application (LA)—could result in unnecessary occupational health and safety risk to workers involved with repository-related activities. This report identifies key DOE conservatisms and focuses on the occupational risk consequences of the DOE's approach to the repository design, performance assessment, and operation.

## Background

A deep geologic repository at Yucca Mountain, Nevada, has been proposed for the disposal of commercial spent nuclear fuel (CSNF) from nuclear power plants and other nuclear fuel and high level radioactive waste (HLW) from defense and nuclear weapons programs. The DOE has submitted the LA to the U.S. Nuclear Regulatory Commission (NRC) for approval to construct the Yucca Mountain repository. The LA and its supporting documents present information on the area surrounding the Yucca Mountain site and the design of the proposed repository surface and subsurface facilities. The LA also includes the DOE assumptions and calculations intended to demonstrate compliance with applicable regulatory requirements. Many of these assumptions and calculations are extremely conservative and have the potential to result in activities that could expose workers to unnecessary occupational health hazards. These hazards exceed those that would be experienced if the DOE had developed the design and performed its analyses using a more realistic approach, such as that recommended by the National Academy of Sciences in its *Technical Bases for Yucca Mountain Standards* report issued in 1995.

## Objectives

To identify aspects of the DOE-proposed approach to Yucca Mountain repository design, performance assessment, and operation that have the potential to expose workers in the nuclear and other related industries to occupational health risks in excess of those that would be encountered if the DOE had taken a more realistic LA approach.

## Approach

In developing this report, EPRI reviewed the Yucca Mountain LA and analyzed 1) the assumptions made by DOE in its analyses, 2) how those assumptions affected the proposed design and operation of the repository, and 3) how the resulting approach has the potential to cause occupational health risks to workers involved with activities at the repository, the reactor, and other commercial sites that could otherwise be avoided if a more realistic approach had been taken. The focus of EPRI's analyses was to identify those activities that could lead to unwarranted occupational health risks and that could be eliminated or modified without impacting the performance of the repository or its compliance with applicable regulations.

## **Results**

EPRI recognizes that there are a certain amount of hazards and risks associated with Yucca Mountain repository-related activities and that it is impossible to reduce such hazards and risks to zero. The term “unnecessary,” as used in this report, is intended to mean the additional risk that may be incurred by performing an activity in the manner proposed by DOE versus the more limited amount of risk that may be incurred by performing the activity in some alternative manner. The difference between the two levels of risk is considered by EPRI to be “unnecessary.”

Unnecessary risks of interest include but are not limited to the 1) proposed use of an undersized transportation, aging and disposal (TAD) canister; 2) exclusion of direct disposal of existing, loaded, dual-purpose canisters (DPCs); 3) underestimation of the fraction of CSNF that will be shipped from reactor sites in a manner that will require processing in a single wet handling facility; 4) overestimation of igneous and seismic hazards, resulting in over-designed facilities and additional complexity for performance assessments and regulatory compliance demonstration; and 5) pileup of conservatisms in assumptions and analyses that have caused DOE to unnecessarily include drip shields in the subsurface design. Any delays in the regulatory process caused by the inclusion of subjects that could otherwise be avoided, or in the shipment of CSNF to the repository, have the potential to impose additional and unnecessary occupational health risks on workers and slowdown in facility completion. Similarly, the performance of any extra manufacturing, transportation, construction, and/or installation activities that could otherwise be avoided carries with it additional health and safety risks for workers. This is especially true for activities involving large and cumbersome components, such as drip shields and transportation casks, or work in difficult environments such as will be encountered at remote sites and in underground locations.

## **EPRI Perspective**

While DOE design and analysis choices, as presented in the Yucca Mountain LA, have led to a demonstration of compliance with the draft Yucca Mountain regulations, EPRI’s analysis has shown that some DOE choices have the potential to cause unnecessary occupational health and safety risks. Such risks could be avoided while still demonstrating repository compliance with the applicable regulations. It is EPRI’s position that DOE should have used more realistic, as opposed to overly conservative, assumptions in designing and assessing the proposed Yucca Mountain repository system.

## **Keywords**

Yucca Mountain  
High Level Radioactive Waste  
Spent Fuel Disposal

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