

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

**BRIEFING AND ORAL ARGUMENT NOT YET SCHEDULED**

STATE OF NEVADA,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 09-1133
	)	
UNITED STATES NUCLEAR	)	
REGULATORY COMMISSION,	)	
	)	
Respondents.	)	
	)	
	)	
	)	

**PETITIONER STATE OF NEVADA’S STATEMENT OF ISSUES**

Petitioner State of Nevada respectfully submits this non-binding preliminary statement of the issues to be raised in this action.

In this statement, “2009 Yucca Mountain Rule” refers to the final rule of respondent Nuclear Regulatory Commission entitled “Implementation of a Dose Standard After 10,000 Years,” published in the Federal Register (74 Fed. Reg. 10811-10830) on March 13, 2009. “2008 EPA Rule” refers to the final rule of the Environmental Protection Agency entitled “Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada,” published in the Federal Register (73 Fed. Reg. 61257) on October

15, 2008, amending the standards it had earlier set under 40 C.F.R. Part 197 (“2009 EPA Yucca Mountain Rule”). Petitioner State of Nevada has petitioned this Court to review the 2008 EPA Rule in an action pending in this Court (*State of Nevada v. Environmental Protection Agency*, Case No. 08-1327).

Petitioners’ issues include the following:

1. The 2009 Yucca Mountain Rule fails to comply with the duty underlying the Atomic Energy Act of 1954 as amended (“AEA,” 42 U.S.C. §§ 2011-2296); section 801 of the Energy Policy Act of 1992 (“EnPA,” Public Law No. 102-486, Title VIII, § 801) and the Nuclear Waste Policy Act (42 U.S.C. §§ 101, *et seq.*) to protect public health and safety in connection with the proposed Yucca Mountain radioactive storage and disposal facility.

2. The 2009 Yucca Mountain Rule is unauthorized because it incorporates radiation standards from the 2008 EPA rule that violate the AEA, EnPA, and the NWPA.

3. The 2009 Yucca Mountain Rule violates the AEA, EnPA, and the NWPA because the NRC failed its independent duty to consider specific events and processes at Yucca Mountain that would lead to a violation of the EPA standard.

4. The 2009 Yucca Mountain Rule assumes that no “event or process” could possibly create a significant risk to safety *after* 10,000 years if it did not pose a significant risk before 10,000 years. But the rule also creates limited exceptions from this rule without considering others. These determinations are irrational, arbitrary and capricious.

5. The 2009 Yucca Mountain Rule establishes an individual-protection annual dose standard of 100 millirem for Yucca Mountain alone in the period after 10,000 years when EPA projects peak dose to occur, rather than the first-tier 15-millirem standard applicable earlier. Peak dose could occur significantly earlier if engineered barriers fail earlier than EPA and NRC have assumed. The rule’s reliance on so-called “international standards” to justify its selection of a second-tier is irrational, arbitrary and capricious. While selectively incorporating certain aspects of international standards, the rule fails to adopt other key aspects needed to render its standard health-protective, including but not limited to the principle of apportionment.

6. The 2009 Yucca Mountain Rule’s reliance on increased uncertainty in predicting repository performance after 10,000 years to justify a much less stringent dose standard for the post-10,000 year period is arbitrary and capricious because (a) it departs from prior EPA precedent

without adequate explanation and necessarily assumes, without justification or explanation, that increased uncertainty can only cause the dose to be overestimated; (b) it does not allow for the possibility that the NRC may conclude in the licensing adjudication that the uncertainty in predicting performance at Yucca Mountain for this post-10,000 year period will actually decrease; and (c) it effectively accounts for the same ostensible concern multiple times.

7. The 2009 Yucca Mountain Rule violates the EnPA because it is contrary to the recommendations of the National Academy of Sciences.

8. The 2009 Yucca Mountain Rule fails to comply with NRC's obligations as specified in *Nuclear Energy Institute v. Environmental Protection Agency*, 373 F.3d 1251 (D.C. Cir. 2004).

9. The 2009 Yucca Mountain Rule is arbitrary, capricious, an abuse of discretion, and not in accordance with the law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(A)(2).

Dated: 6-11-2009

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, **Nayelli González**, hereby declare under penalty of perjury as follows:

I am over the age of 18 years and am not a party to the within action. My business address is 380 Hayes Street, Suite One, San Francisco, California 94102.

I am, on this **11<sup>th</sup> day of June 2009** serving the following documents:

### STATEMENT OF ISSUES

by certified mail, return receipt requested, at San Francisco, California by depositing in sealed envelope a petition copy, time-stamped by the Clerk of the Court, to each of the following persons:

Executed on **June 11, 2009**, at San Francisco, California.



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**Nayelli González**

**SERVICE LIST**

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