STATE OF NEVADA COMMENTS ON THE
U. S. NUCLEAR REGULATORY COMMISSION'S
FY 2004 – 2009 DRAFT STRATEGIC PLAN
December 31, 2003

NRC Principles of Good Regulation

In light of NRC's decision to ban State of Nevada representatives, local governments, and the public from pre-licensing meetings with DOE on Yucca Mountain issues, the inclusion of openness as a principle of good regulation is more than a little ironic. Nothing in the meetings held in Las Vegas or planned for future meeting that will also be held behind closed doors warrants such secrecy. Such clandestine activities serve only to reinforce the appearance of collusion between DOE and NRC with respect to licensing and to severely damage public trust and confidence in NRC as a fair and impartial arbiter of fact.

The closed door meetings also call into question another stated principle of good regulation – independence. If NRC has to resort to secret meetings with a prospective licensee to review matters that are directly related to licensing, it is difficult to see how independent NRC is in its approach to regulation.

Section I - Safety

HLW Transportation, Storage, and Disposal (pages 6 – 7)

No mention is made of the need to review and strengthen regulations for safeguarding SNF and HLW shipments from terrorism and sabotage. The imperative to revisit and strengthen transportation safeguards regulations is distinct from and clearly as important as ensuring the safety of spent fuel transportation casks. In fact, it is possible that even the most rigorous shipping cask certification requirements will not be sufficient to prevent a radiological release in the event of a successful terrorist attack using modern armor-piercing weapons or high-intensity explosives. Safeguards regulations need to be such that terrorism and sabotage events will be prevented. In the petition for rulemaking filed by the State of Nevada in 1999 asking NRC to review its safeguards regulations, evidence was presented that current regulations may not be adequate to prevent modern terrorists from successfully breaching a transport container. Four years later, NRC has yet to act on that petition.

Safety Strategies (page 8)

A strategy for and commitment to strengthening regulations governing the safeguarding of SNF and HLW shipments from terrorism and sabotage should be included in this section.

Means to Support Safety Strategies (pages 9 – 10)

The ninth bullet under this section calls for NRC to "[c]onduct pre-licensing consultation and begin regulatory activity when the Yucca Mountain repository application is received." As noted above, the credibility of NRC and it's licensing/regulatory role in the Yucca Mountain program is irreparably damaged when NRC staff hold closed door, secret meeting with DOE staff and contractors and exclude the State of Nevada and other affected parties. Such actions are unethical, if not illegal, and make a mockery of NRC's assertions about its unbiased regulatory role.

The eleventh bullet in this section commits NRC to "[c]onduct full-scale testing of spent fuel transportation truck and rail casks under accident conditions to verify the designs and modeling that has been performed." In addition, this strategy should include requiring full-scale testing as part of certification process for future cask designs. Conducting demonstration tests on one cask model only goes so far in assuring that all casks will meet performance requirements under real world conditions.

Bullet number 15 in this section involves assessing key issues affecting "the safe and *cost effective* management of civilian low-level waste disposal to ensure that the uncertainty in obtaining access to licensed disposal sites does not adversely affect licensees' ability to operate and decommission their plants safely." NRC should make it perfectly clear that this strategy is not intended to permit the disposal of LLW outside of licensed and regulated LLW disposal facilities.

Section II – Security

Security Strategies (page 13)

A strategy should be added that requires NRC to act immediately to address potential shortcomings in safeguards regulations and practices for the transportation of SNF and HLW.

Means to Support Security Strategies (page 14)

A bullet should be added that deals with reviewing and strengthening SNF and HLW transportation safeguards.

Section III – Openness

Ensure Openness in Our Regulatory Process

The first sentence in this section states that "… NRC views nuclear regulation as the public's business and, as such, it must be transacted openly and candidly in order to maintain the public's confidence." NRC is obviously not prepared to live up to these high-minded words when it comes to its dealings with the State of Nevada on the Yucca

Mountain project. Unless NRC is prepared to act with openness and genuine impartiality, a qualifying phrase should be added to the statement, saying "… except in the case of DOE and the Yucca Mountain program, where it's permitted to conduct business in secret."

Means to Support Openness Strategies (page 7)

If NRC is sincere about seeking to assure openness, impartiality, and accountability in its licensing and pre-licensing role with respect to the Yucca Mountain program, a new bullet should be added to this section requiring that all meetings and interactions with DOE regarding Yucca Mountain be open to the State of Nevada, affected local governments, affected stakeholders, and the public.

IV – Effectiveness

Realistic regulatory activities focus on safety and security while avoiding unnecessary conservatism (page 20)

In the abstract, seeking ways to avoid "unnecessary conservatism" in regulatory activities might seem a worthy goal. However, in practice – especially with regard to nuclear activities – it is not a simple matter to distinguish between necessary and unnecessary conservatism. The safety record NRC points to with such pride is largely the result of a regulatory regime that is designed to err on the side of conservatism (i.e., stricter rather that weaker regulatory requirements). The current push to reduce the regulatory burden by removing requirements that might be characterized by some as overly conservative may have certain cost benefits in the short term, but would result in much larger industry-wide costs in the event that such regulatory "relief" leads to even one accident or incident involving radiological release and contamination.

Effectiveness Strategies (page 21)

Using "performance-based regulation to minimize unnecessarily prescriptive requirements" (bullet number 3) may not be promotional of continued safety if the so-called "prescriptive requirements" have been responsible (in whole or in part) for the historically safe performance.

Bullet number 6 commits NRC to "minimize unnecessary regulatory and jurisdictional overlap." The challenge here is to be able to distinguish "unnecessary" overlap from that which is appropriate and supportive of enhanced safety and public confidence. Overlapping regulations and multi-agency jurisdiction are effective strategies for enhancing safety and promoting public trust and confidence in activities that are inherently risky or perceived so by the public. NRC would do well to remember that regulations were imposed for valid reasons, and the fact that there are overlapping areas of regulation ensures an added layer of safety.

Bullet number 8 commits NRC "to make timely regulatory decisions." The State of Nevada notes that NRC has yet to act on Nevada's June, 1999 petition for rulemaking asking NRC to review and strengthen transportation safeguards regulations for SNF and HLW.

Means to Support Effectiveness Strategies (pages 21 – 22)

The fifth bullet under this section indicated that NRC "may make some NRC regulations less prescriptive and provide licensees with increased flexibility in meeting certain regulatory requirements." Such an approach could prove to be a slippery slope. Regulations were made prescriptive for good reason and have served the cause of commercial nuclear safety well over the years. Without such a prescriptive approach to regulation, would the safety record have been as good? Will increased "flexibility" for licensees further safety goals?

Taken together, the section on effectiveness strategies appears weighted towards reducing historically effective safety-related regulation rather than strengthening it. In the post 9/11 world and heightened public concern about risks from nuclear activities, the approach NRC is taking could lead to less safety and greater public distrust of things nuclear.