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MEMORANDUM

TO: Mike Stafford, Coordinator
Nevada State Clearinghouse

FROM: Joseph C. Strolin, Administrator
Planning Division

DATE: May 5, 2004

SUBJECT: *Nevada Agency for Nuclear Projects' Comments on DOE/NNSA's Preapproval Draft EA for Using Biological Simulants and Releases of Chemicals at the Nevada Test Site (Nevada SAI # E2004-167)*

The Nevada Agency for Nuclear Projects offers the following for inclusion in the Clearinghouse's comments on the above-reference EA:

- (1) The analysis of cumulative impacts in the preapproval Draft EA is inadequate. We note that simultaneous with the release of the Draft EA for using biological simulants and releases of chemicals at NTS, DOE/NNSA also is seeking comments on a project involving the use of radiological/nuclear materials at NTS as part of a "countermeasures test and evaluation complex" (ref. the April 6, 2004 "Notice of Intention to Prepare an Environmental Assessment for a Radiological/Nuclear Countermeasures Test and Evaluation Complex" at NTS). Yet, the preapproval Draft EA makes no mention of the radiological/nuclear countermeasures project, nor does it examine possible cumulative or synergistic impacts.

Likewise, the Draft EA fails to examine possible cumulative impacts from DOE's ongoing low-level radiological waste(LLW), mixed LLW and hazard waste, and transuranic waste activities at NTS. Thousands of shipments of waste come into NTS each year. The Draft

EA should assess any potential health or safety impacts to DOE LLW or truwaste workers, drivers, inspection personnel, etc. from chemical and/or biological releases under the proposed action or impacts to these other DOE programs caused by planned or unplanned releases under the proposed action (i.e., work stoppages, evacuations, etc.).

If DOE adheres to its published schedule and overcomes State of Nevada opposition to the proposed Yucca Mountain repository program, large numbers of workers and others involved with the construction of that project will be working and traveling on NTS regularly. Likewise, starting in 2010 (according to DOE's schedule), large numbers of spent fuel and high-level waste shipments could start arriving at the repository. The Draft EA should examine possible impacts of the proposed action on Yucca Mountain workers, drivers, inspectors, and others involved with that project. For example, could there be harmful health effects to individuals who are repeatedly exposed to the chemicals and/or biological agents planned under the proposed action? The EA should examine meteorological conditions that could cause such exposures and assess any short or long-term consequences.

- (2) The type of project contemplated (i.e., the planned releases of chemical and biological agents into the environment) has the potential, especially in Nevada, to evoke considerable public concern, given the past history of contamination from the nuclear weapons testing program, DOE's track record nationwide of environmental degradation, and human and environmental contamination at almost every DOE nuclear facility.

Since DOE has not widely noticed or distributed the Draft EA, additional efforts must be made to inform the public about the proposal and provide opportunities for comment. DOE should immediately schedule public meetings in Las Vegas, Nye County and in one or more "downwind" communities in Nevada (and possibly Utah). Meeting dates, times and places plus the addresses for making written comments should be well publicized so as to maximize public awareness and participation.

- (3) The Draft EA should have addressed whether the proposed action is consistent with the purpose for which Congress withdrew the land for the Nevada Test Site (i.e., atomic weapons testing-related activities). Under the terms of the negotiated settlement of the State of Nevada's lawsuit challenging the Nevada Test Site EIS, DOE was to have consulted with the Bureau of Land Management regarding the status of the land withdrawal and consistency of various NTS activities with the mission of the NTS as specified in the land withdrawal legislation. To date, State officials are not aware that such consultation has taken place or of any plans for resolving the issue.

A related issue that must be addressed in the EA is whether the proposed action is consistent with any of the actions contemplated by and assessed in the Nevada Test Site EIS.

- (4) In Chapter 5.0 (Statutes, Regulations, Consultations, and Other Requirements), no mention is made of consultations with the Federal Drug Administration, the Department of Agriculture, the Environmental Protection Agency or the Centers for Disease Control regarding the biological agents proposed for use under the proposed action. Given the fact that biological aerosols and “simulants” will be dispersed into the environment, potentially exposing flora, fauna, and humans to such agents, it would seem appropriate to require DOE to involve the federal agencies responsible for regulating biological materials and for protecting public health and the environment. In addition, there is no indication in the Draft EA that the Department of Homeland Security has been consulted with respect to the proposed action. Since, presumably, the purpose of the biological and chemical releases is to help better prepare responders and others to deal with biological and chemical threats, the Department of Homeland Security should be a key agency involved with the planning and oversight of the proposed action.
- (5) The Draft EA contains no discussion of possible impacts of terrorism and sabotage on the activities contemplated in the proposed action. Are the chemicals and biological agents to be used in any way potential targets for terrorist action? What precautions are planned for securing the material while being transported to the NTS? What are the potential impacts/consequences of a successful terrorist attack on a shipment of the various chemicals/biological enroute to NTS (i.e., release of the material in a large metropolitan area along a shipping route, not just in Nevada but in the largest city along the transportation route)? The Draft EA should contain a section that address possible terrorism/sabotage impacts, both at NTS and during transportation to NTS.
- (6) On page ES-4 of the Draft EA, under the section titled “Human Health and Safety,” the statement is made that “the health and safety of NTS workers is protected by adherence to the requirements of federal and state law, DOE orders, and the plans and procedures of each organization performing work on the NTS.” Given DOE’s past history of worker and public contamination and resulting health consequences, such an assurance ring hollow. In Nevada, just in the past few months, we have had a situation where, despite strict federal and state regulations, DOE orders, the plans and procedures of organizations working for DOE, and a thorough scientific and industry understanding of how to prevent health consequences, Yucca Mountain tunnel workers were exposed to potentially deadly levels of silicon dust and other dangerous minerals from tunneling operations. The situation occurred because DOE and its contractors *ignored* regulations and established health protective procedures for reasons of cost and schedule. Simply stating that health and safety will be protected because the regulations say so is meaningless in the absence of a commitment to enforcing those regulations and in light of DOE’s historical and even recent track record in this regard. The EA should examine the use of a truly independent oversight entity, autonomous from DOE, that would continually review activities under the proposed action, assure that health and safety requirements are, in fact, being adhered to, and have the authority to take effective action in the event DOE does not adhere to practices that are protective of worker and public health and safety.

- (7) The EA should also contain an analysis and explication of the jurisdiction and roles of State of Nevada agencies with respect to the proposed action (i.e., the State Health Division, the Division of Environmental Protection, the Division of Emergency Management, the Nevada Department of Public Safety, and other potentially involved/affected agencies) and assess any impacts to State agencies as a result of the proposed project.
- (8) Because of the insufficient public notice regarding the availability of the Draft EA and the lack of broad solicitation of public comment, we strongly recommend that DOE extend the deadline for the comment period, schedule additional public meetings as discussed above, and widely publicize the availability of the document, the comment period and the meetings.

Thank you for the opportunity to comment on the predecisional Draft EA. If you have questions regarding the Agency for Nuclear Projects' comments, please contact me or Bob Loux, Executive Director, at 775-687-3744.

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