

**STATEMENT OF ROBERT LOUX, EXECUTIVE DIRECTOR
NEVADA AGENCY FOR NUCLEAR PROJETS
ON THE U.S. DEPARTMENT OF ENERGY
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT
STATEMENT FOR THE DISPOSAL OF SPENT NUCLEAR FUEL
AND HIGH-LEVEL RADIOACTIVE WASTE AT YUCCA
MOUNTAIN, NYE COUNTY, NEVADA**

**LAS VEGAS, NEVADA
DECEMBER 3, 2007**

This Draft Supplemental Environmental Impact Statement (SEIS) indicates that its purpose is two-fold. First, it is to assist the Nuclear Regulatory Commission in meeting its mandate, under the Nuclear Waste Policy Act, to adopt, “to the extent practicable,” DOE’s environmental impact statement for a Yucca Mountain repository program. Adopting the DOE’s EIS, as supplemented, would assist NRC in meeting its requirements under the National Environmental Policy Act (NEPA) to prepare an EIS for its decision to issue a license to DOE for a Yucca Mountain repository, should it make such a decision.

This Draft SEIS describes a major repository conceptual design and system operations change DOE has made since issuing the Final Yucca Mountain EIS, in 2002. The role of public review and comment under NEPA, which is to help inform major federal decisions that significantly affect the environment, is moot in the case of this Draft SEIS, since DOE already has made and incorporated in its plans the decision it is describing. NRC’s licensing decision will rely on DOE’s changes that were made prior to any formal opportunity for public review and comment.

The Draft SEIS retains a significant insufficiency that we noted and commented on in our review of the Draft Yucca Mountain EIS, in 1999 and 2000. This Draft SEIS incorporates by reference the No-Action Alternative in the 2002 Final Yucca Mountain EIS. Neither of the two scenarios for No-Action meet the requirement of the NEPA regulations that alternatives considered must be reasonable. One scenario is that the spent nuclear fuel would be maintained at the reactor sites for 100 years, and then all care would be terminated for the remainder of a 10,000 year period. The other is that the spent nuclear fuel would be maintained at the reactor sites for a 10,000 year period. It is inconceivable that either of the scenarios would materialize, which means that neither is reasonable. Our challenge of this violation in the U.S. Circuit Court of Appeals for the District of Columbia was mooted by Congressional action on the Yucca Mountain site recommendation, but if the NRC adopts the DOE No-Action Alternative, its EIS will be vulnerable to challenge.

The second stated purpose of this Draft SEIS is to provide the analysis and decision basis for the DOE to proceed with its plan for infrastructure improvements prior to receipt of a Construction Authorization from NRC at and near the Yucca Mountain site. The work would be done under the jurisdiction of DOE self-regulation rather than NRC regulations.

The work would include about 20 miles of new and replacement access road construction, including a paved road on the crest of Yucca Mountain, about 20 miles of new electric transmission line construction, development of a 30 acre central operations area including 5 support buildings, and construction of a new sample management facility. The work was first proposed in a June 2006 draft Environmental Assessment, which subsequently was withdrawn. It is now proposed, described, and analyzed in this Draft SEIS without some of the alternatives described in the original EA. After issuance of the Final SEIS, DOE would issue a Record of Decision for implementation of the proposed infrastructure improvements. But, that would be the only record of decision issued for the entire SEIS.

On August 8, 2006, we commented on the DOE's EA for infrastructure improvements, and those comments remain relevant, and are incorporated as part of our comments on this Draft SEIS. None of the work is necessary for DOE's safe occupation of the Yucca Mountain site. It is all planned to be done by DOE in anticipation of its receipt of a Construction Authorization from NRC for a repository, and would not be needed were a Construction Authorization not granted. Also, it is not authorized by the Nuclear Waste Policy Act to be undertaken in the period between completion of Site Characterization and receipt of a NRC repository license. And finally, DOE has been denied a water right by the Nevada State Engineer for use of the water that would be required to accomplish the proposed construction. The denial is in litigation that remains stayed.

Taking no action should be the preferred alternative for infrastructure improvement. It results in no harm, and does not preclude necessary maintenance of existing facilities.

We appreciate the opportunity to make these comments, and we will be providing written comments on the Draft Yucca Mountain SEIS prior to the comment submission deadline.