

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

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

PETITION FOR REVIEW

1. Notice is hereby given this the 8th day of May, 2009, that petitioner State of Nevada petitions the United States Court of Appeals for the District of Columbia Circuit for review of the attached final rule of the respondent entitled “Implementation of a Dose Standard After 10,000 Years,” executed by Annette L. Vietti-Cook, Secretary of the United States Nuclear Regulatory Commission (NRC), on March 9, 2009, and published in the Federal Register (74 Fed. Reg. 10811-10830) on March 13, 2009 (the “2009 NRC Yucca Mountain Rule”).

2. NRC adopted the 2009 NRC Yucca Mountain Rule pursuant to its authority to adopt technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act, as amended (“NWPA”), 42 U.S.C. § 10141(b), which in turn references the NRC’s authority under the Atomic Energy Act of 1953 (“AEA”), 42 U.S.C. § 2011, *et seq.*, and the Energy Reorganization Act of 1974, 42 U.S.C. § 5801, *et seq.*
3. Section 801 of the Energy Policy Act of 1992 (“EnPA,” Public Law No. 102-486, Title VIII, § 801) provides further direction to NRC in its adoption of technical requirements and criteria under NWPA section 121(b) for the proposed high-level nuclear waste repository at Yucca Mountain, Nevada.
4. Section 801(b)(1) of EnPA directs the NRC to “modify its technical requirements and criteria under section 121(b)” of NWPA “as necessary, to be consistent with” the Environmental Protection Agency’s (EPA’s) public health and safety standards for radiation releases at Yucca Mountain adopted under EnPA section 801(a).
5. An earlier version of NRC’s regulations governing Yucca Mountain, 10 C.F.R. Part 63, was published in the Federal Register

(66 Fed. Reg.55732) on November 2, 2001 (“2001 NRC Yucca Mountain Rule”). In *Nuclear Energy Institute v. Environmental Protection Agency*, 373 F.3d 1251 (D.C. Cir. 2004), this Court vacated in part both the 2001 NRC Yucca Mountain Rule and the 2001 EPA Yucca Mountain Rule (40 C.F.R. Part 197) that NRC had incorporated into its 2001 rule.

6. On October 15, 2008, EPA published in the Federal Register its final “Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada” (73 Fed. Reg. 61257), 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 2009 EPA Yucca Mountain Rule in an action pending in this Court (*State of Nevada v. Environmental Protection Agency*, Case No. 08-1327).
7. Petitioner has commenced this action because the 2009 NRC Yucca Mountain Rule fails to comply with applicable laws, including the NWPA, the AEA, and EnPA, and thereby fails to protect public health and safety in connection with the proposed Yucca Mountain Repository. The 2009 NRC Yucca Mountain Rule is also 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).

- 8.** Venue for this petition properly lies in this Court pursuant to NWPA section 119(a)(2), 42 U.S.C. 10139(a)(2). Pursuant to 28 U.S.C. §§ 1391, 2343, venue additionally lies in this Court, based upon the legal residence and headquarters of respondent, and the location of a substantial part of the events and omissions by respondents giving rise to the claim, within the District of Columbia.
- 9.** Petitioner requests as relief that the Court: (a) declare that the 2009 NRC Yucca Mountain Rule is arbitrary and capricious, an abuse of discretion and otherwise inconsistent with applicable law; (b) hold unlawful and set aside the 2009 NRC Yucca Mountain Rule; (c) stay application and enforcement of the 2009 NRC Yucca Mountain Rule pending resolution of this petition; and (d) grant such other and further relief as may be appropriate.

Respectfully submitted,

Catherine Cortez Masto
Nevada Attorney General
Marta Adams
Chief Deputy Attorney General
Bureau of Government Affairs
Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701-4747
Tel.: (775) 684-1237

Egan, Fitzpatrick & Malsch, PLLC
Charles J. Fitzpatrick
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Tel: (210) 496-5001
Fax: (210) 496-5011
Martin G. Malsch
1750 K Street, N.W., Suite 350
Washington, D.C. 20006
Tel: (202) 466-3106
Email: mmalsch@nuclearlawyer.com

Rossmann and Moore, LLP
Antonio Rossmann
Roger B. Moore*
Jennifer L. Seidenberg
380 Hayes Street, Suite One
San Francisco, CA 94102
Tel: (415) 861-1401
Fax: (415) 861-1822
Email: rbm@landwater.com

By: _____

Roger B. Moore

Attorneys for Petitioner State of Nevada

* counsel of record