

**STATEMENT OF
CATHERINE CORTEZ MASTO
ATTORNEY GENERAL
STATE OF NEVADA
BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

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I am Catherine Cortez Masto, Attorney General of the State of Nevada. I appreciate this opportunity to appear before the Committee for the State of Nevada regarding the Yucca Mountain repository program.

Nevada has a long history of opposing the development of the proposed high level nuclear waste repository at Yucca Mountain. The Yucca Mountain site is unsafe and incapable of geologically isolating nuclear waste. Not only is the site physically unsuitable for a nuclear waste repository but the United States Department of Energy has repeatedly shown itself to be an unfit applicant for a license from the Nuclear Regulatory Commission. Finally, the prospective NRC licensing proceeding is seriously biased and denies Nevada and other potential participants basic due process rights.

The following summary highlights issues relating to the involvement of the U.S. Environmental Protection Agency and NRC in the Yucca Mountain repository licensing process. Nevada raises these issues to seek your guidance and to place public safety at the forefront of any decision regarding the disposal of the nation's lethal high-level radioactive waste.

The EPA Standards and NRC Licensing Regulations are not yet final.

This unexplained fact raises the issue of whether NRC can properly docket and begin substantive review of DOE's license application. DOE plans to file a license application relying on the proposed EPA Standard by June, 2008. NRC staff has said that it can begin its substantive review even without the final EPA standard because there are elements of the license application that are not directly responsive to the EPA standard. DOE's rationale for proceeding without a standard is that if the final EPA standard is different from what was proposed, DOE can simply amend its license application to respond to the new requirements. Before this can happen, however, NRC will have to revise its proposed rule written to conform to the proposed EPA standard. This will create an untenable situation where EPA and then NRC are revising their standards and rules while NRC is simultaneously reviewing DOE's license application originally written to meet draft standards and rules which have been subject to extensive critical public comment. Interested parties, including Nevada, will be prejudiced by this chaotic situation. We must begin our review of DOE's entire application

at the time it is submitted in order to file NRC-required contentions thirty days after NRC has completed its acceptance review and docket the application. It is both wasteful of limited resources and patently unfair that potential interveners, whose accepted or rejected contentions determine their party status, should be forced to review an entire license application that likely will undergo substantial amendment and change.

The obvious solution is that NRC should be prohibited from accepting DOE's license application for review until final EPA and NRC regulatory requirements are in place. Then, an orderly and fair review can commence.

DOE's rush to file its License Application causes serious safety and completeness concerns.

At a recent Nuclear Waste Technical Review Board meeting, DOE reported that the repository safety related design for the operating surface facilities and the underground disposal area will be only 35% to 40% complete at the time the license application is filed. Similarly, the design of the waste canisters – the so-called TADs (Transportation, Aging and Disposal canisters) – which have become the centerpiece of DOE's waste handling, transport, storage, and disposal strategy, is not planned to be complete until after the June 2008 license application filing date. Legally required plans for recovery and mitigation of accidents and response to emergencies, necessary accounting for nuclear materials, security at the repository, and retrieval of waste will also not be included in the license application. Clearly, concerns for public safety necessitate that these critical plans should be complete and reviewable by all parties and potential parties during the mandatory license application review.

This lack of complete design and planning information is wholly attributable to DOE's rigid insistence on its self-imposed June 2008 license application date. Without access to key information, Nevada and other potential parties cannot adequately develop contentions. The obvious danger inherent in imposing an inflexible, artificial schedule is that meeting it takes on overriding importance and safety is shortchanged.

The federal government plans to "double team" the licensing hearing.

Under NRC's current rules, NRC staff will be a party-advocate along with DOE, the license applicant. Nevada and other potential admitted parties will certainly be prejudiced by this procedural defect. Once the NRC staff has completed its review of DOE's application, DOE has provided acceptable responses to any staff requests for additional information, and NRC staff has written a Safety Evaluation Report supporting DOE's receipt of a license, NRC staff and attorneys then turn around and become party advocates for DOE as a prospective licensee.

This anachronistic situation, where two powerful executive department agencies join together to overpower legitimate intervening parties, is palpably unfair. We believe the public would be infinitely better served if NRC staff maintained a more appropriate, neutral role during the hearing. The public's confidence will certainly be enhanced if NRC staff remains a neutral evaluator rather than a redundant advocate and aggressive "partner" to DOE.

Thank you for this opportunity.