



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS

1761 E. College Parkway, Suite 118
Carson City, NV 89706-7954
Telephone (775) 687-3744 • Fax (775) 687-5277
E-mail: nwpo@nuc.state.nv.us

Thank you for the opportunity to address Nevada's perspective on key issues regarding the DOE License Application. I apologize I can't be with you in person but I am celebrating my father's 80th birthday with him in Michigan today.

The State of Nevada has waited more than twenty years for the opportunity to have our concerns and questions addressed during the licensing application. We consider the order allowing 222 of our contentions to be a strong validation of all the hard work put in by our scientists, consultants and legal experts. Nevada is thrilled to finally have the chance to make our case in front of the licensing boards.

Today, one of our consultants, former NRC Chairman Victor Gilinski, along with Marty Malsch, a partner and litigator on our legal team, will be speaking on my behalf. In addition, our transportation expert Bob Halstead is in attendance to answer any questions you may have about Nevada's response to the DOE National Transportation Plan.

I look forward to participating in person at the next available opportunity.

Respectfully,

Bruce Breslow

Executive Director
Nevada Agency for Nuclear Projects
Office of the Governor

**Comments of
Robert J. Halstead,
Transportation Advisor,
State of Nevada Agency for Nuclear Projects,
U.S. Nuclear Waste Technical Review Board Meeting,
Las Vegas, Nevada,
June 11, 2009**

Since September 2008, the last time we provided the Board with an update on Yucca Mountain transportation, there have been four note-worthy developments:

- (1) the Department of Energy (DOE) issued a National Transportation Plan (NTP) for public comment;
- (2) the State of Nevada petitioned the Surface Transportation Board (STB) to suspend or reopen consideration of DOE's application for authority to construct and operate the proposed Caliente rail line;
- (3) the Nuclear Regulatory Commission (NRC) Atomic Safety and Licensing Boards issued a Memorandum and Order incorporating transportation issues in the Yucca Mountain licensing docket and admitting a number of transportation contentions submitted by Nevada and other parties; and
- (4) the State of Nevada recently filed a legal challenge to DOE's Record of Decision (ROD) selecting the Caliente rail alignment.

DOE National Transportation Plan

DOE issued the NTP for public review on January 16, 2009, and announced it would accept public comments through April 30, 2009. On March 2009, DOE notified Nevada and other states that DOE would not be responding to comments on the NTP, but would archive comments received for unspecified future consideration. The Nevada Agency for Nuclear Projects submitted 37 pages of comments to DOE on April 21, 2009. Nevada's comments are available at <http://www.state.nv.us/nucwaste/news2009/pdf/nv090421ntp.pdf>.

Nevada's comments on the DOE National Transportation Plan emphasize that despite 26 years of planning activities and expenditure of \$780 million dollars, DOE's 28 page "Plan" ignores virtually all of the critical issues identified by Nevada and other stakeholders. Significant omissions and unrealistic assumptions include:

- SNF & HLW Characteristics, Radiation Protection, ALARA;
- Safety & Security Recommendations (Oldest Fuel First, Cask Testing, Dedicated Trains, Sec 180c Funding Adequacy, Routing);
- SEIS Transportation System Details (12,000 – 39,000 cask shipments through 44 states, over 50 years, costing \$20 Billion);
- New DOT PHMSA and DHS TSA Security Regulations Governing Rail Routes through Cities and High Threat Urban Areas(HTUAs);

- Unrealistic Assumptions about Rail Access and Operations for Yucca Mountain & Reactors, Intermodal Transfers, Infrastructure Upgrades, Heavy Haul Truck and Barge Shipments; and
- Unrealistic Assumptions about Use of TAD Canisters, Mostly Rail and Overweight Truck Scenarios.

Nevada Motion to Surface Transportation Board

The State of Nevada, through the Office of Attorney General, filed a motion on April 7, 2009, alternatively requesting the STB to suspend or reopen proceedings on DOE's application for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the proposed Caliente rail line. The Nevada motion to the STB is available at <http://www.state.nv.us/nucwaste/news2009/pdf/nv090407stb.pdf>.

Nevada's motion submits that "materially changed circumstances evidenced by past Congressional appropriations and present Presidential opposition and FY2010 budget" for Yucca Mountain provide justification to suspend further proceedings on the DOE application. [p.79] Alternately, Nevada's motion submits that "the materially changed circumstances, the omissions of material information, inconsistent and contradictory positions in cumulative filings to date and the new, materially changed regulatory requirements," particularly the new rail safety and security rules promulgated by the Transportation Security Administration (TSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), justify reopening the proceeding for further consideration of public convenience and necessity. [p.79] STB has not yet acted on Nevada's motion.

NRC ASLB Memorandum and Order

In its December 2008 petition to intervene in the Yucca Mountain licensing proceeding, the State of Nevada submitted 16 contentions regarding repository transportation impacts which Nevada believes require further evaluation under the National Environmental Policy Act (NEPA). The Nevada petition is available at http://www.state.nv.us/nucwaste/licensing/Contentions_NV.pdf.

The NRC Atomic Safety and Licensing Boards managing the first phase of the Yucca Mountain licensing proceeding issued a Memorandum and Order Identifying Parties and Admitted Contentions on May 11, 2009. The Memorandum and Order is available at: <http://www.state.nv.us/nucwaste/licensing/nrc090511contentions.pdf>.

The ASLBs' May 11 Order accepted the general position of Nevada and other parties that off-site transportation impacts must be considered in the repository licensing proceeding. The Boards found "...there can be no serious dispute that the NRC's NEPA responsibilities do not end at the boundaries of the proposed repository, but rather extend to the transportation of nuclear waste to the repository. The two are closely interdependent. Without the repository, waste would not be transported to Yucca Mountain. Without transportation of waste to it, construction of the repository would be irrational. Under NEPA, both must be considered." [p.38]

The ASLBs' May 11 Order also admitted all 16 of the Nevada transportation contentions. Nevada's contentions address the following issues:

- Impacts of Transportation Sabotage & Severe Accidents (7 contentions);
- Impacts of Rail Access Construction & Operation (5 contentions);
- Impacts of Transportation Routine Radiation (2 contentions);
- Impacts of TAD Shipment Numbers (1 contention);
- Impacts of Representative Routes (1)

The appeal filed on behalf of NRC Staff did not challenge Nevada's transportation contentions, nor the ASLBs' position on NRC's NEPA responsibilities regarding transportation.

Overview of Nevada Transportation Concerns

Nevada's main transportation concerns remain unchanged since our last update to the Board. These concerns are:

- Safety and Security of the Proposed Shipments
- Proposed Use of TAD-Canisters
- Mostly Rail Transportation Scenario
- Transportation Impacts in Las Vegas and Clark County

Nevada is particularly concerned that DOE shipments to Yucca Mountain would be much larger in number, longer in distance and duration, and more complex in operations than past US shipments of spent nuclear fuel (SNF):

- 30 times more SNF per year
- 3-4 times longer shipment distances
- Sustained campaign of shipments for 50 years
- Routes would cross 44 States
- Rail shipments would impact major urban areas

Significant transportation safety, security and regulatory compliance issues remain unresolved:

- Will plants have to ship oldest fuel first?
- Will DOE use dedicated trains for all rail shipments?
- Will there be enough funding for accident prevention & emergency response?
- Will States, Tribes, & local communities have a role in route selection?
- Will NRC require full-scale cask testing?
- What could be the consequences of terrorist attack or sabotage?
- To what extent will NRC regulate DOE shipments?

DOE's proposed use of a TAD Canister-based transportation system is speculative and creates significant uncertainties:

- TAD design, certification, & cost remain uncertain;
- Utilities have made commitments to non-TAD conforming dry storage (and not to TADs);

- DOE has failed to assess the implications of TAD specifications for facilities interfaces, intermodal transfer, and cross-country routes;
- DOE makes unrealistic assumptions about TAD use (75 – 90 percent of commercial SNF); and
- DOE does not identify any transport system alternatives to TADs.

DOE has failed to address “Mostly Rail” Scenario problems:

- Uncertainties about, and impacts of, the proposed Caliente rail line;
- Lack of rail access at more than 20 of the 72 plant shipping sites;
- Assumed availability of short-line rail carriers to access shipping sites;
- No DOE infrastructure upgrade funding from the Waste Fund;
- “Representative” rail routes through “high threat urban areas” conflict with TSA & PHMSA Safety and Security Rules;
- Unrealistic cross-country modal mix assumptions (95 % rail, remainder OWT); and
- No transportation mode alternative to rail identified by DOE.

DOE has failed to address concerns about transportation impacts in Las Vegas & Clark County:

- Rail shipments through downtown Las Vegas on Union Pacific route to Caliente could be as much as 85% of total, resulting in one or more trains per week for 50 years.
- Truck Shipments through Las Vegas Valley suburbs on I-15, I-215 Beltway, & US 95, under current DOE proposal would be 100% of total, resulting in two or more truck shipments per week for 50 years.