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## Yucca project assailed

### NRC board hears Nevada's challenges

By KEITH ROGERS  
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Nevada's lead attorney took a stab Tuesday at killing the Yucca Mountain nuclear waste project, arguing before a licensing board that the Department of Energy neglected to consider the failure or absence of a key safety feature.

Also, Marty Malsch, a lawyer with a Washington, D.C.-area firm retained by the state, told nuclear regulators the repository's design should be rejected because it is only 70 percent complete.

Those were two of 11 legal challenges the Nuclear Regulatory Commission's Construction Authorization Board heard in the first day of oral arguments. The hearing comes two years after the DOE submitted its license application for building a repository for the nation's highly radioactive waste and used reactor fuel at a disposal site inside a volcanic-rock ridge 100 miles northwest of Las Vegas.

The hearings continue today at the NRC's Las Vegas facility on Pepper Lane.

Based on questions asked by one of the panel's three judges, Malsch's most convincing argument dealt with the failure or absence of 11,000 titanium shields that would protect waste containers from corrosive water, dust and rocks that could fall inside a maze tunnels. The "drip shields" wouldn't be installed for a century.

Malsch said the repository's design relies heavily on the drip shields, which are a part of the system of engineered barriers to prevent deadly radioactive materials from escaping into the environment.

"We're talking a million years, and uncertainties are rampant," Malsch told the panel, describing how a "defense-in-depth" system must stay intact long after the initial 10,000-year requirement for containing the waste.

"Defense in depth is the elephant in the room, and the message from DOE and (NRC) staff is to ignore that elephant, but you can't," Malsch said. Without the drip shields, he said, the repository fails to meet the radiation safety standard.

Administrative Judge Richard Wardwell repeatedly asked DOE and NRC lawyers how dependent the repository's design is on the drip shields to ensure it is safe and functions as planned.

"Wouldn't you, as DOE, want to know if the drip shields are providing 99 percent of the protection?" Wardwell asked Donald Silverman, one of two attorneys representing the Energy Department at Tuesday's hearing.

Silverman answered: "My understanding is that is not what the commission wanted."

Again Wardwell asked, "If drip shields provide 99 percent of the protection, wouldn't you want to

know that?

Silverman responded: "I imagine we would."

While DOE attempted to consider the probability of the drip shields failing from corrosion or rock falls after many thousands of years, Malsch said during his final statement, "they did not evaluate the absence of the drip shields at the very beginning."

DOE does not plan to install the drip shields for about 100 years after 77,000 tons of used reactor fuel and highly radioactive defense waste are loaded into the repository.

Malsch and Nevada officials have described the plan as "science fiction," because the robotic system needed to install the shields in such a hot, radioactive environment doesn't exist. And they have questioned the availability of enough titanium to complete the shields.

Perhaps more importantly, Malsch said, no guarantee exists that Congress would have an appetite or the means to fund construction of the drip shields.

The licensing panel will have to decide if there is reasonable assurance that DOE will be able to follow through with its plan and that it will work as designed.

Decisions on the 11 legal challenges discussed Tuesday aren't expected for weeks.

Meanwhile, the Obama administration and Energy Secretary Steven Chu maintain that Yucca Mountain is no longer an option for disposing the nation's high-level nuclear waste and that a yet-to-be-announced commission will chart a new strategy for the future.

Bruce Breslow, executive director of the Nevada Agency for Nuclear Projects and a Yucca Mountain opponent is not so convinced that will happen.

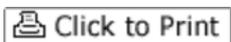
"Their word is 'off the table,'" he said during a break in the hearing. "You can always put it back on the table. They haven't said it's dead. They haven't withdrawn the license (application) and declared the site unsuitable. That's something the energy secretary could do and that's something we're urging."

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