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**BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES**

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I am Robert Loux, Executive Director of the Nevada Agency for Nuclear Projects. The Agency was established in 1985 by the Nevada Legislature to carry out the State's oversight duties under the Nuclear Waste Policy Act.

We have reviewed the provisions of the bill S. 2589 entitled "Nuclear Fuel Management and Disposal Act." It is a most extraordinary piece of proposed legislation, even when viewed in the highly politicized and conflict-laden context of the past nineteen years of this nation's high-level nuclear waste disposal program. During that time we have witnessed the unraveling of the scientific screening and characterization of candidate repository sites, as set out in the Nuclear Waste Policy Act of 1982, to be replaced with the unabashed, politically driven naming of Yucca Mountain, in Nevada, as the only potential repository site to be studied.

We have seen Congress prohibit the study of crystalline rock sites for a potential repository in order to avoid the brewing political turmoil over siting a second repository in any of the populous states of the northern mid-west and the eastern seaboard, where a large number of the nation's nuclear power reactors are located.

The 1992 Energy Policy Act was Congress' rescue vehicle for the Yucca Mountain repository site when it was discovered that Yucca Mountain could not meet the EPA's general safety standard for repositories. EPA's subsequent standard, aimed at protecting the viability of the Yucca Mountain site, was thrown out by the court, and its proposed replacement, if adopted, will likely meet the same fate.

DOE's site recommendation guidelines and NRC's licensing rule were adjusted to assure the site would not be disqualified for specific technical safety deficiencies.

And, in 2002, the Secretary of Energy recommended, the President approved, and Congress designated the Yucca Mountain site for development of

a repository despite the fact that the Department of Energy was unprepared to submit an acceptable license application to NRC. Just last month, Congress was told that a license application is planned to be submitted in 2008, six years later than the Nuclear Waste Policy Act's required 90 days after site designation by Congress.

Now you have before you a bill that attempts, like a cowcatcher on a locomotive, to anticipate and sweep aside every potential health and safety obstacle that could upset the relentless drive to begin receiving highly radioactive waste and spent nuclear fuel at Yucca Mountain in 2017 – eleven years from now. (Ironically, in 1987, when Congress singled out Yucca Mountain, in an attempt to anticipate and fix the burgeoning waste program problems, the planned opening date also was then eleven years in the future - in 1998.) The bill is so dismissive of American democratic values that it is not worthy of this Committee's or the Congress' consideration.

Removal of potential health and safety obstacles to expedite licensing and operation of a Yucca Mountain repository does nothing to advance the primary safety finding of the Nuclear Waste Policy Act: "high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations." (Sec. 111(a)(7)). Each of the historical actions noted above has resulted in incremental reductions of safety (and increased risk) in the national nuclear waste program. This bill before you today is a continuation of that trend to the extent that it weakens or eliminates regulatory processes and controls, both for the repository and in the nuclear waste transportation arena.

RCRA Exemption

Exempting waste transportation, storage, and disposal from the requirements of the Resource Conservation and Recovery Act (RCRA) and relying, instead, on regulations adopted under the Atomic Energy Act is an unprecedented compromise of well-understood, long-held and accepted protection of the public from the risks of hazardous materials in the environment. This is a step backward, away from the accepted policy. The Department of Energy's activities associated with hazardous materials are currently subject to external environmental regulatory oversight, more comprehensive in scope than that afforded under the Atomic Energy Act. This bill's provision would allow the unprecedented release of hundreds of millions of pounds of hazardous chromium, molybdenum, vanadium, and nickel into the currently potable groundwater supply without any regulatory review. The amount of hazardous metals released would vastly increase if the repository's nuclear waste capacity limit was lifted, as proposed by this bill.

Transportation Preemptions

The Secretary of Energy should not be permitted to exempt waste transportation to the repository from external regulation. Also, the Secretary should not be given the ability to take the initiative in preempting State, local, and Indian tribal transportation requirements “irrespective of whether the transportation otherwise is or would be subject to regulation under the Hazardous Materials Transportation Authorization Act of 1994.” These provisions severely compromise these entities’ ability to be informed and knowledgeable of sources of risk passing through their jurisdictions and take measures required of public officials to protect public safety. They constitute an unnecessary and undesirable trading of public safety for an unspecified increase in convenience for the Department of Energy. They also ignore a recent National Academy of Sciences study that found, in part, that nuclear waste transportation can be acceptably safe *if all existing regulatory requirements are rigorously enforced*.

NRC Licensing and EIS

The bill mandates both substantive and procedural measures for the NRC license application and review process that curtail the existing rights of parties to review a complete application and take part in an adjudicatory hearing of the entirety of the proposed project. Permission to limit the information in the application for construction authorization to “surface facilities necessary for initial operation of the repository,” coupled with the elimination of formal proceedings for license amendments following the construction authorization, greatly inhibits the ability of parties to participate in a comprehensive safety review of the facility.

Furthermore, any Environmental Impact Statement (EIS) written to accompany a construction authorization decision will be insufficient in its required description of the project and evaluation of potential impacts if the complete planned surface facility and its operations are not available for analysis. The surface facility design concept is currently undergoing a major revision because of operational safety concerns that could not be mitigated. This provision allowing the complete surface facility design and operation to avoid full formal safety review during initial licensing proceedings invites unknown future safety and operational issues to arise, putting the public and workers at increased risk.

State Delegated Authorities

Nevada exercises lawfully-delegated authority to regulate emissions affecting air quality. This bill would usurp that authority for any activity or facility associated with the Yucca Mountain project, which according to provisions of the bill, could include construction and operation of a 319 mile-long new rail line to Yucca Mountain. Effective air quality management relies on familiarity with local conditions, and the public benefit of this valuable experience, especially related to construction in essentially pristine areas, would be lost under this bill.

State Groundwater Authority

The bill usurps the State's traditional authority to administer its waters by commandeering the State to grant extraordinary rights to the Department of Energy. The State's constitutional authority and implementing laws, under which the State Engineer makes water appropriation decisions, are ignored when the bill declares that the Department's use of any amount of water it decides is necessary for the Yucca Mountain project is beneficial to interstate commerce, and not detrimental to the public interest. The commandeering of the State Engineer's authority would extend to water needed for the proposed rail line which, in some places, passes through basins where the safe yield of the groundwater is already fully appropriated. The Department, under this bill, would have no obligation to protect the water resources of the State

Land Withdrawal, Land Use and Air Space Issues

The proposed withdrawal of 147,000 acres (approximately 230 square miles) of land for the Yucca Mountain project, which could include land for the 319 mile-long rail access to the site, is premature. Without a construction authorization by NRC, which the Department does not expect until at least 2011, there is no need or basis for the withdrawal. In order to receive a repository license, the Department must demonstrate ownership and control of the repository site, but this is not necessary prior to submitting a license application. DOE could simply agree to a condition that, if construction authorization is granted, a land withdrawal will be accomplished.

The proposed withdrawal unnecessarily limits public entry and use of current Public Land for at least the next five years, a period during which the Department has not demonstrated a need for the Public Land portion of the withdrawal.

The bill also gives the Secretary of Energy the authority to close airspace over the repository withdrawal area, despite any objection from the Secretary of the Air Force, whose aircraft currently use the airspace for thousands of training missions each year, with the frequency of use expected to increase in future years. The Air Force Secretary already has objected to any Yucca Mountain associated activity that would compromise the national defense mission of the Air Force.

And, the withdrawal would give the Department authority to exchange land within the withdrawal for federal land outside the withdrawal. With the various limitations for use of withdrawal lands, if exchanges were made to acquire land for the rail access line, this could greatly disrupt, without recourse, public use and access to lands currently used for grazing, mining and mineral exploration, and recreation.

Pre-License Construction

The bill's provisions for infrastructure improvement and construction prior to NRC construction authorization are also premature and imprudent. The Department recently has released for review and comment, an Environmental Assessment outlining the six new buildings and many miles of new road and electrical power line construction and replacement, it plans over a two year period prior to construction authorization. In the EA, the Department claims the approximately \$100 million worth of new and replacement construction is not intended to support repository construction and operation, yet the bill gives a green light for just that purpose, even though, according to the Department's recently announced plans, the anticipated construction authorization is just five years away. Without a construction authorization from the NRC, the proposed new and replacement construction is not needed, not authorized by the Nuclear Waste Policy Act, and certainly not prudent, despite the thin claims in the EA that it will improve safety for workers, visitors, and regulators, and support continuing scientific work and testing.

Program Funding

Opening the annual receipts of the Nuclear Waste Fund as discretionary offsetting collections to fund the program is not an entirely new concept. Well over a decade ago, then Energy Secretary Hazel O'Leary made the plea to Congress, "Untie my hands," when seeking full access to the Nuclear Waste Fund. Since that time, we all have come to see that full access to the waste fund would not have been the solution to the problems that the program has inflicted on itself, and are beyond the scope of the anticipated and potential problems that this bill seeks to sweep aside.

Quality Assurance

Throughout its history, the inability of the program to implement a satisfactory quality assurance program has been chronicled by the General Accounting Office (now Government Accountability Office) and the NRC, yet to date the problems persist. But, according to Department managers, as always, they are on the verge of being solved. Quality assurance failures were at the core of the now infamous e-mail incident whose fallout has caused millions of dollars of expense and immeasurable loss of credibility that still is ongoing. Open access to the Nuclear Waste Fund would not have provided an obvious solution to the persistent quality assurance failures. Instead, the Department sees it as a "culture" issue and is now (after more than 20 years) claiming to be implementing measures to make individual managers more accountable for their work and the work they supervise. In the licensing proceeding, the Department must demonstrate that it has management systems in place and functioning that would support an NRC finding that the Department would be a qualified and competent licensee. The Department itself does not seem to believe that it yet passes this test, but is confident that it will by the time of license application.

Concluding Remarks

The many provisions of this bill that are aimed at eliminating administrative and regulatory requirements the Department perceives as obstacles to meeting its latest schedule for opening a Yucca Mountain repository have the appearance of being a litany of excuses for continued poor performance. Virtually all of the issues raised in the bill involve actions that are outside of the control of the Department. Yet the real obstacles that the Department must deal with are of its own making. A most telling example was the Department's inability to comply with the NRC's requirement to provide an adequate and acceptable documentary record to support its then-anticipated 2004 license application. The Department's recently announced fantasy schedule calls for its next effort to provide such a record to take place on December 21, 2007, providing just a few days more than the required six months prior to submitting a repository license application, which is scheduled by the Department for June 30, 2008.

None of the provisions of S. 2589 are needed by the Department of Energy to carry out the primary task at hand - prepare a complete, high quality license application and submit it to the Nuclear Regulatory Commission for review and hearing. This bill gathers the powers of numerous federal and state agencies, local authorities, and Indian tribes into the hands of the Department of Energy, probably the most distrusted federal agency in the human health and environmental arena. It boldly does this for the sole purpose of attempting to force a faltering Yucca Mountain nuclear waste repository into becoming a reality.