

FINAL REPORT

DOE and Public Trust in the Proposed Yucca Mountain Repository Program

November 2003

**Prepared for the Clark County
Department of Comprehensive Planning
Nuclear Waste Division**

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1.0 Public Trust and the Repository Program

Recently, the focus on public opposition to hazardous waste facility siting has turned to the importance of public trust in explaining both risk perceptions and opposition. There is growing evidence that concern over waste facilities is related to the distrust of specific agencies empowered to regulate these facilities. In this context, the lack of confidence in governmental institutions to develop and manage a nuclear waste repository has also been observed.

Jacob ^(PT-1) has argued that opposition to the repository siting reflects conflicts related to political organization, access and public confidence. In the same light, Raynor and Cantor argued that an approach to risk management should emphasize the principles of achieving consent to a technology, fairly distributing liabilities, and finally, producing trust in governmental institutions. According to the authors, the public is concerned about three areas: 1) the acceptability of the procedures by which collective consent is obtained; 2) the acceptability of how liabilities/risks are to be distributed; and 3) the level of trust in the institutions that will manage and regulate the technology ^(PT-2). The question of “how fair is safe” and how credible are the governmental agencies to manage risk, are the key issues to understanding opposition and conflict over hazard technology. Indeed, the public's past interactions and history with hazardous facilities can play an important role in shaping their perceptions and concerns.

As early as 1981, the Office of Technological Assessment (OTA) concluded that the most formidable problem confronting the development and siting of nuclear waste repositories was the level of distrust among concerned parties, noting this distrust threatened to lock the program into continued paralysis ^(PT-3). Moreover, as part of a U.S. General

Accounting Office (GAO) study, Bella and colleagues suggested that part of the failure of the repository program was a result of the Department of Energy's reluctance to accept greater state and local involvement in agency processes (PT-4). Such concerns culminated in the 1993 report of the Secretary of Energy Advisory Board Task Force on radioactive waste management that described how the agency could restore public confidence. The advisory board acknowledged that distrust in DOE's repository program was not "irrational." In fact, the follow-up work by Laporte and Metlay was an attempt to provide insights on structuring programs for re-establishing trust (PT-5). Based on the work by Slovic et al., they argued that trust is based on an "organizational constancy" (PT-6).

Jacob suggested that at least two crises confront the high-level nuclear waste-siting program (PT-1). The first crisis entails the loss of scientific credibility, both for the program and for the experts who endorse it. The crisis has been brought about by a series of factors including the continuing errors in projections over the difficulty of handling and disposing of nuclear waste problems at hazardous waste facilities and at DOE's nuclear facilities, and the lack of public disclosure in the past by DOE's activities. The second crisis according to Jacob, involves the institutional loss of legitimacy (PT-1). The key elements to legitimacy are all being challenged, including scientific credibility challenges to the rules and procedures of decision-making (the principles of law and administrative procedure underlying the program and policy), and the guarantees of social and economic equity and fairness in the siting process.

Laporte and Metlay (PT-5), Flynn et al. (PT-7 and PT- 8) and Mushkatel et al. (PT-9 and PT-10), have shown that public fears over risks are exacerbated by institutional distrust and that unless trust is sustained, opposition may amplify.

Recognizing the institutional limitations in siting efforts, a prevalent current approach is to educate the host communities about objective risks. DOE's activities in this regard have failed in Nevada where opposition to the repository has been sustained at very high levels. In this case, surveys have demonstrated public skepticism with the scientific information and the lack of credibility with DOE studies, shifting scenarios, and uncertainties with the program design.

One factor influencing declining trust is the perception that governments' are not taking prompt actions at hazardous waste sites. In explaining extreme opposition to a potential site for hazardous waste, Edelstein observed that the poor record of state and federal environmental agencies in taking effective remediation actions at contaminated sites engendered lack of trust by residents in governments' ability to protect public health (PT-11). This record coupled with DOE's well noted environmental management failures at virtually all of its other nuclear facilities have influenced attitudes over the repository siting. Indeed, Kasperson et al. argued that such transference might help explain the process regarding the social and political amplification of risk (PT-12).

The fairness/equity variable has become an important component of trust, especially in procedural fairness in the siting process. Goldsteen and Schorr suggested that for many communities affected by siting decisions, "They have not shared in the rewards; they have been deceived, their rights trampled and their concerns dismissed" (PT-13). In this context, the belief that the siting process is fair is fundamental to trust and allowing the process to proceed. Yet, the results of trust surveys in Clark County (described in the next section), clearly indicate that most residents view the repository siting process as unfair; and partially as a result, oppose it. Barber suggested that two facets of trust are critical to the

understanding of the declining trend of political trust (PT-14). These two elements included technical competence and fiduciary responsibility. As the public surveys and trust demonstrate, confidence in the competence in DOE to ensure safety and equity/fairness in siting are fundamental to the credibility of the agency, which is now lacking.

The two crises noted by Jacob (PT-1), scientific credibility and institutional legitimacy, resulted in the loss of trust. The federal agency has been criticized on the grounds of procedural equity. If government loses its legitimacy, if its laws are seen as biased against elements of the populace (for example, the characterization of only one site for the repository), if other governmental institutions issue evaluations which further question the credibility and capability of those agencies with protecting the health and safety of the public, how can anyone expect the repository to go forth? Bella and others in their insightful work for the GAO, remind us of the fundamental importance of trust for a society. Without trust in government and leaders "...order arises not from freely given consent and commitment but through coercion and proliferation of rules and those that administer them" (PT-4). Hence, the reaction to the NWPA of 1987, at least by opponents to the siting in Nevada, was to view it as nothing more than a coercive effort of government to force the repository on the state. Indeed, local influence over the siting process has been reduced to a minimum, with the locus of control firmly rooted in federal agencies and institutions.

2.0 Surveys on Public Trust and the Repository Program: Clark County

Based on the above documentation and other reviews, it is clear that the U.S. DOE has been challenged as to its competency and ability to safely manage the country's high-level nuclear waste programs and specifically the proposed Yucca Mountain repository in Nevada. In the numerous studies of the proposed Yucca Mountain repository, trust and

confidence in the management of such facilities have been shown to be important elements in explaining the public's attitudes, opposition and risk perceptions. A number of surveys of Clark County residences have been carried out since 1988 to ascertain the level of public trust and confidence in DOE's repository program to ensure safety, the fairness of the siting process, and the honesty of the agency about the repository program.

As early as 1990, a report explaining the high level of opposition to the repository found from major reasons: perceived risks to future health and safety; equity issues (fairness in siting the repository in Nevada and DOE procedures); the potential for economic loss; and the potential for federal mismanagement of the program (PT-15). The surveys have consistently found high levels of distrust in the DOE to manage the repository in a manner to ensure the safety and in the agency's information about repository risks.

One of the earliest surveys (1988) of Clark County residents found low levels of public trust especially in the agencies charged with implementing the Nuclear Waste Policy Act (NWPA) (PT-16). In that survey, when asked about the likelihood of the repository to be constructed and operated in a safe manner, only 19 percent felt it was likely. Only 18 percent had confidence in the ability of the federal government to effectively respond to an accident and a large segment of the population was skeptical that accidents would be reported promptly.

The report on the 1988 survey concluded, "the agencies given the federal mandate to implement the NWPA are the *very* agencies and institutions which residents trust the least to protect their safety." The survey also showed a significant relationship between levels of public trust, risk perception and opposition to the facility. This finding has been consistent among the surveys and over time. That is, the distrust of the federal government with the

repository program is related to public opposition, which has remained consistently high in Clark County. Interestingly, more than 60 percent of Nevadans believed that *no* improvement was expected in the federal government doing a better job with a future repository than in running other nuclear facilities (PT-7).

The lack in *fairness* of selecting the site for the repository at Yucca Mountain is not only a consistently held belief by Clark County residents, but was also observed to be a critically important element in their over all distrust of DOE to manage the repository program (PT-10). Mushkatel and others found that two-thirds of Las Vegas area residents in 1988 thought that the *process* of selecting the Yucca Mountain site was unfair (PT-17). Four years later, residents held similar attitudes toward the siting process (PT-10). The public concern over fairness was corroborated in a 1994 survey by Flynn and others (PT-8). In that survey, over 25 percent of the county residents stated the siting process was “completely unfair” and over 50 percent indicated that it was unfair.

The issue of fairness in the repository-siting program also encompasses the public confidence in the quality of information reported in studies by the DOE for the repository program. Flynn and others argued that low trust scores were related to whether the DOE studies were objective and scientifically sound (PT-15). Mushkatel and Pijawka also found that Clark County residents tended to trust the federal government very little with regard to information about the repository (PT-9). In fact, almost 24 percent had *no* trust at all in the scientific information produced by DOE; around 65 percent stated that they would not change their view on the repository based on new information on risks from DOE; and 78 percent believe that DOE has underestimated the risks (PT-9, PT-10, PT-18).

The surveys on public trust have been highly consistent over time in regards to the following elements of trust:

- (1) High levels of distrust in DOE's ability to manage the repository program in a manner to ensure public safety.
- (2) Distrust is related to both risk perceptions and opposition to the repository.
- (3) The perceived lack of fairness in the process of siting the repository is a critical factor in distrust of the agency and opposition to the facility. Procedural and process equity are important public issues when it comes to the repository.
- (4) There is a lack of credibility in the quality of the scientific information used and made publicly available by the U.S. DOE. Of particular concern is the perceived underestimation of risks.
- (5) The DOE has not been honest when dealing with the State of Nevada on matters related to the repository. For example, 41 percent of Clark County residents strongly disagreed and 30 percent disagreed that the DOE would provide prompt and full disclosures of problems related to the repository ⁽¹⁰⁾. This finding is corroborated in Flynn et al. (PT-7, PT-8).

3.0 Conclusion

This brief review on public trust and the repository program suggests that trust and its various components – credibility, fairness, honesty – are critical factors, in determining how the public views the repository program. Nearly all the surveys on public views and attitudes regarding the repository suggest that trust in the DOE has been lost by a large segment of the Clark County population. This trust has been lost because of DOE's repeated pattern of not incorporating public concerns into their investigations and reports; mishandling of

information; and poor record of environmental management at virtually all of its nuclear facilities.

Trust in the fairness of the siting process; in obtaining public consent; the inclusion of local information and concerns; the credibility of the agency to manage the repository in a safe manner; all are critical to the formation of public acceptability. Yet this review concludes that the procedures and processes utilized by the DOE to gather information and prepare the DEIS have failed to meet these standards.

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**DRAFT REPORT
(Not for Quotation and Publication)**

**The History of Clark County's Oversight
of the Proposed Yucca Mountain Repository**

January 11, 2000

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It is important that issues pertinent to Clark County and local entities are considered at the earliest date. In addition to ensuring that impacts are minimized, it is also important to make the federal government aware of the degree of local concern about: a) the project, and b) the fact that Clark County and its citizens would be the best judge on determining what local impacts would result . . . (Donald Shalmy memorandum to County Manager Spaulding, December 21, 1983).

While Clark County has been an affected unit of local government (AULG) since 1988, as a result of the Nuclear Waste Policy Act Amendments passed in 1987, its concerns about potential impacts from the repository project probably formally began with Shalmy's memorandum. The County's role in the siting process, including its response to the DEIS, is a result not only of the NWPAA and various mandates, but also the county governmental mission, and a lengthy history of actions by the County Commissioners and agencies aimed at overseeing the siting process. The County's standing in the process is a result of the combination of these factors, and they must be understood to fully appreciate the level of effort and attention the County has given to the proposed repository.

On December 21, 1983, the then director of the Clark County Department of Comprehensive Planning, Donald Shalmy provided the County Manager with an issue paper on the newly proposed high-level nuclear waste repository. Shalmy's early issue memorandum articulated several important concerns about impact issues that seem almost prophetic today. The concerns he outlined in 1983, are even more poignant today, and since the memorandum the County's efforts to obtain clarification and assurances about how the DOE planned on treating and managing these issues has largely been unproductive. Since at

least 1983, the County has attempted to fulfill its responsibilities under the NWPA and its subsequent Amendments (NWPA and NWPAA respectively), as well as its' mandate to protect the health, safety and welfare of its residents. Despite the long-term attention the County has given to these impact issues, its concerns remain because of the lack of attention to them provided by the DOE. Indeed, the lack of cooperation by the DOE in developing the DEIS with the affected units of local government including Clark County, may very well constitute a violation of the letter of the NWPA and NWPAA, and certainly its spirit.

The 1983 briefing report was a response to a request for information from Commissioner Woodbury and raised five issues that Clark County and local entities needed to carefully consider to ensure that impacts would be minimized. These issues were identified at the very earliest stages of the project by Clark County and included:

- Emergency response issues;
- Transportation routes and modes;
- Socioeconomic considerations including employment, and impacts from construction;
- Perceptual issues and their influence for example on tourism, and quality of life;
- Mitigation funds to minimize impacts and for the analysis of potential impacts from the project ^(H-1).

Additional issues such as environmental justice, fiscal impacts on government, and greater public involvement have been raised concerning the potential impacts from the siting. Yet these five issues have remained part of the core County concerns, as reflected in this response to the DEIS, and a host of other county formal communications with the DOE. While space does not permit a review of all of the County efforts to secure answers from the

DOE concerning these issues, a brief review of the County's mandates and its efforts needs to be examined.

The NWPA of 1980 in Section 116 (B) (PL 96-285) formally recognizes affected units of local government (AULG). The County had already on January 8, 1985 adopted a resolution opposing the selection of the Yucca Mountain site, and in early 1988 by resolution declared itself an AULG. Hence, the County Commissioners' actions were in full compliance with both the NWPA and NWPA. Under Section 116 (B) of these acts the County was mandated and agreed to use the assistance afforded to AULGs to do the following:

- Determine any potential economic, social, public health and safety, and environmental impacts of the repository on the state or its residents;
- Develop a request for impact assistance (if appropriate);
- Engage in monitoring, testing or evaluation activities with respect to site characterization activities;
- Provide information to state (county) residents concerning the siting;
- **Request information from, and make comments and recommendations to the DOE on actions they have taken** (Section 116 (B), emphasis added) ^(H-2).

This current response to the DEIS clearly falls under this last bulleted mandate, as well as the National Environmental Policy Act (discussed below). Within the Department of Comprehensive Planning, the Nuclear Waste Division was formed in 1988, to carry out these duties, as well as those directly resulting from the County's AULG status and to implement a program reflecting Clark County policy regarding Yucca Mountain. In addition, the County has fiduciary responsibility and is required to protect the health, safety,

and welfare of its citizens under the General Welfare Clause. Should the repository siting, operation, or transportation of waste have negative impacts on the residents including their quality of life, the County is required to provide protection. Hence, the County has throughout the siting process made every effort to communicate its concerns about potentially negative impacts to the DOE. Unfortunately, the observation made on September 28, 1985 concerning the County's efforts to enter into constructive dialogue with DOE is as true today as it was then, namely: "DOE in a nutshell, politely ignores us" (H-3). Perhaps no better place to observe this ignoring of the County's efforts can be seen in the DEIS after reviewing some of the County's efforts to gain assurances that its concerns would finally be addressed by this seminal document.

In 1991, Clark County as well as other governmental entities made an attempt to contribute to DOE's own effort to understand why it had lost trust and credibility by testifying before the Secretary of Energy Advisory Board Task Force on Civilian Radioactive Waste (H-4). In this important testimony, an effort was made to explain to DOE why the lack of trust in the DOE by citizens might negatively spill over onto the County's own Nuclear Waste Repository Program. The County's testimony went on to cite four factors that were essential to the County's effective participation in the program. These factors included the following:

1. Programmatic independence;
2. Secure funding provisions;
3. Secure planning periods,
4. Consistent evaluation criteria. (H-4: pp 10)

We are all aware of the continuing conflicts over programmatic independence, the instability of funding from year-to-year, the shifting time frames and planning periods, and the changing criteria as reflected in recent changes in radiation exposure limits. On January 13, 1995 (prior to the EIS Scoping Meetings later that year), all ten of the affected counties met with Secretary and Under Secretary of the DOE. In this meeting that largely dealt with interim storage proposals the County once again articulated one of the key factors missing from the program. The County indicated that its effective involvement in any program was contingent on DOE “Acknowledge (ing) the role of local governments as pre-decisional participants in all phases of the siting process” (S-5). In all of these meetings the County clearly indicated the importance it attached to the NEPA provisions being fully implemented.

In its continuing effort to communicate to the DOE the importance it attached to its concerns about several issues related to potential negative impacts, as well as the entire EIS process, the County sent the DOE a lengthy detailed document. This *Review of Impact Concerns* document was sent to the DOE following their EIS Scoping Meeting in Las Vegas (H-6). This 1995 document contained an examination of the major concerns and issues that the County felt were imperative to cover in any EIS and assessment. The issues raised in the document were the result of years of State of Nevada, local government and County studies, as well as years of meetings in which these and other issues were discussed. It is impossible to review all of these concerns in depth but they included the following:

- Property value diminution;
- Negative impacts on the visitor economy;
- Regional traffic disruptions;

- Inequitable distribution of risk—environmental justice;
- Project-related business and population impacts;
- Local government finance imbalance resulting from project related costs;
- Political and institutional conflict resulting from the program causing local political instability (H-6: pp x-xi).

Obviously these concerns cannot all be covered here in depth, as often the discussions in the document on these issues are lengthy and technical. Rather it is important to note that the County did communicate its concerns and how important it was that the EIS address these issues as they reflected both the County's residents and leaders concerns. Indeed, DOE representatives assured the NWD that the EIS would address all of these issues. These assurances were provided numerous times verbally and in writing. Hence, between 1995-96 and the delivery of the DEIS, there was some optimism that the issues central to Clark County would finally be addressed in depth.

In 1998, as a result of meetings with DOE leading to a request for additional and previously supplied information, the NWD sent another document outlining the County's comments and concerns about the EIS. The "Comments, Findings and References Regarding The Draft Yucca Mountain Environmental Impact Statement" was a thorough document representing the County's views. It was submitted to Ms. Wendy Dixon of the DOE at the invitation of the Department solicited at the August 4th, 1998 meeting with DOE and contractor representatives, and the AULG. The Comments document was an effort by the County to aid the DOE while making certain the issues vital to County interests would be examined. Three objectives were listed in the accompanying letter to the Comments document:

- Highlight significant issues that Clark County believes the DOE must address in meeting its responsibilities under the National Environmental Policy Act;
- Present findings and contextual information regarding the comments listed, and
- Provide references to substantiate the comments and findings discussed (H-7).

As the accompanying letter also noted, “The EIS is, for Clark County and the other AULG, the most important document produced in this program” (H-7: pp 2). The letter also noted that a major strength that Clark County brings to the EIS process is that it has a comprehensive knowledge of the geographical area of responsibility. Obviously, the County was once again attempting to aid in producing a better product by offering its cooperation and expertise and requesting it be brought into the process prior to its completion. The attached Comments document, thoroughly commented on issues the County felt was critical for the EIS, as well as providing findings as to why the issues or processes needed to be included along with references supporting its position. The County was assured these materials “would be cited in the EIS by the DOE where appropriate, placed in public reading rooms along with other EIS materials, furnished directly upon request to interested persons, and otherwise made accessible through electronic and/or hard copy means” (H-7: pp 1 of attachment). Indeed, under NEPA provisions the DOE was required to make reference materials to the public for at least the full public comment period.

Despite DOE assurances, these actions were not taken and the Comments document was not referenced in the DEIS nor was the document included as an appendix. This decision by DOE not to keep its word was a violation of a legally binding agreement between two governmental entities both possessing legal standing in the NWPA and NWPA. The Comments document covered eight areas and represented a large

investment of personnel time and effort. It placed DOE on notice of what the County believed was required in the DEIS, provided its findings and references. The Comments document covered the following areas:

1. Public and institutional processes (including why Clark County must be allowed reasonable opportunity to provide accurate information for use in the DEIS);
2. Scope and Policy (time frame, uncertainties);
3. Cumulative Impacts and integration with other EIS's, NRC Licensing Process etc.)
4. Methodology (system methodology and system assessment of environment and groundwater);
5. Public Health and Safety (radiation exposure levels, etc.)
6. Transportation (the entire transportation network must be examined, as well as many other issues relevant to transportation);
7. Environmental Justice;
8. Fiscal and Economic effects.

Despite the County's efforts to communicate major issues and concerns, and despite repeated assurances by the DOE that these issues and concerns would be addressed in the DEIS, the DEIS does not adequately address. Despite the fact that the County comments drew heavily on the Environmental Assessment Checklist developed by the DOE Office of NEPA Oversight, many of its comments were not addressed. Hence, critical issues to Clark County are either not addressed in the DEIS, poorly addressed in the EIS, or are not realistically addressed in the DEIS.

As recently as early this year, DOE continued its policy of ignoring the AULG. The DOE without explanation dropped the Directors meetings that were occurring on a quarterly basis. It is these types of actions, and the County's continuing to be politely ignored by the DOE that have resulted in a seriously flawed DEIS. As demonstrated in our response, the DEIS is marginal and should be found so.

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