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Re: State Clearinghouse Comments – Draft Supplement Analysis (SA) for the Nevada Test Site Environmental Impact Statement – SAI E20002-157

Dear Ms. Carlson:

We have completed our review of the Draft Supplement Analysis (SA) for the Nevada Test Site, Site Wide Environmental Impact Statement (EIS). A general overview of the document is presented first, followed by specific section-by-section comments. We conclude with several specific recommendations.

General Comments:

Land Use: The U. S. Department of Energy's (DOE) Record of Decision (ROD) for the Nevada Test Site, Site Wide Environmental Impact Statement (EIS), states that the Department's "use of the Nevada Test Site (NTS) continues to be consistent with the existing land withdrawals." However, the ROD further stated "in view of the comments submitted by the State [of Nevada] and Department of Interior . . . DOE commits to continue to consult with the Department of Interior, Bureau of Land Management as to whether the four major land withdrawals that comprise the Nevada Test Site need to be updated." The ROD also states that "DOE has selected the No Action Alternative for management of low-level and mixed low-level wastes, pending programmatic decisions regarding where the Department should manage these wastes, [and thus] there will be no immediate changes in DOE's ongoing use of the lands for disposal of radioactive wastes."

With the issuance of DOE's Programmatic EIS ROD for low-level waste (LLW), significant changes in DOE's national policy concerning disposition of certain LLW have now occurred.

Many LLW streams, which are deemed unsuitable for onsite disposal at facilities across the Nuclear Weapons Complex, can now be sent to the NTS and/or the Hanford nuclear reservation for “final” disposal. The SA is silent, however, on the land use implications of this action. This is particularly relevant concerning the purpose of the intended land withdrawals for the NTS. The purpose of the land withdrawals was to establish an “on continent” proving ground for nuclear testing; the orders say nothing about using the NTS as a national/regional LLW disposal site to support cleanup of the nuclear weapons complex.

The land withdrawal orders also say nothing about using the NTS for non-defense commercial uses. In that regard, what is the specific federal land use authorization for the two major non-defense (private) commercial applications proposed at the NTS (i.e., the Wind Farm proposal and the Kistler Launch Facility)? State officials are aware of certain references to delegated permitting authorities granted to the NTS Development Corporation by DOE, however the SA is silent on whether or not these activities would be consistent with the land withdrawal orders.

The SA also suggests that land uses will not be affected by new site activities at the NTS. Yet the document fails to evaluate changes in environmental impacts, changes in physical characteristics, and changes in regulatory requirements that would result from new site activities envisioned at the NTS.

Soils Remediation: In Chapter 4 of the SA (Section 4.2.4) a discussion is provided that suggests that plutonium-contaminated soil remediation on the Nevada Test and Training Range (NTTR) would not cause any adverse impacts. (NTTR is the new name for the Nellis Air Force Range.) The SA further indicates changes in mission or soil remediation plans taken since development of the 1996 NTS EIS would clearly be under the umbrella of impacts evaluated in that EIS. It is also noted in Chapter 3 (Section 3.1.3) that the overall environmental restoration program strategy for soils (reference Table 3-4) is the same as described in the 1996 NTS EIS.

The State’s review of the 1996 NTS EIS, however, indicates that DOE did not define a clear environmental restoration strategy for remediation of plutonium and uranium contaminated soils on the NTTR. The 1996 NTS EIS only states that “the final disposition of the remaining isotope inventory in these soils will be determined as part of the Soils Corrective Active Unit of the Environmental Restoration Program,” (see page 4-106 third paragraph – DOE Final NTS EIS 08/96).

In the years since the 1996 NTS Site Wide EIS was completed, the State of Nevada (*Division of Environmental Protection - NDEP*) has participated with DOE and the United States Air Force in a dialog concerning “cleanup levels” for contaminated soils on the NTTR. While this dialog continues today, the parties have yet to reach complete agreement on a final soil remediation level that should be pursued to address soil contamination on the NTTR.

As a matter of record, the NTS Site Wide EIS did not evaluate alternatives for soil remediation levels and their consequences. And since an interim or final decision that establishes a soil remediation level would be considered a major federal action, DOE should

initiate a National Environmental Policy Act (NEPA) process to address alternative remediation “cleanup” levels, costs, and Long Term Stewardship (LTS) management options. State officials strongly believe that DOE should institute such a process to further agency planning through development of a separate Environmental Assessment (EA) for the NTS Soils Corrective Action Unit Environmental Restoration Program, [see agency planning and decision-making 40 CFR Part 1501.3(b)]. Examples of issues that should be addressed in such a document could include:

- An examination of alternative soil removal levels and the effects on occupational safety and health issues;
- A review of long-term stewardship responsibilities such as institutional controls among the responsible federal entities (i.e., DOE, the United States Air Force, and the Bureau of Land Management ¹).
- An assessment of the effects of soil extraction and related short-term erosion by water and wind processes including proliferation of contaminants in the biosphere; and
- An assessment of hazards associated with shipping LLW from the NTTR to NTS for disposal.

Waste Management: Changes in waste management activities at the NTS occurred with the issuance of DOE’s Waste Management Programmatic Environmental Impact Statement (PEIS) Record of Decision (ROD); the ROD selected Nevada (NTS) and Washington (Hanford site) as regional/national disposal sites for DOE low-level waste (LLW) and mixed LLW.

This national decision also required an amendment to the NTS Site Wide EIS ROD. The amendment now permits DOE to significantly expand the list of offsite waste generators that would be allowed to dispose of LLW and potentially mixed LLW at either the NTS Area 5 or Area 3 waste disposal sites.

In addition to these programmatic changes, DOE has also revised the agency’s self-regulatory authorities for waste management activities through replacement of Waste Management Order 5820.2A, with DOE Order 435.1. This action revised DOE’s approach to self-regulation by re-defining and/or adding new waste management requirements including revised performance assessments, a new composite analysis requirement and disposal authorization statements, defined closure plans, as well as new waste acceptance requirements and site monitoring activities.

While these recent programmatic decisions and new/revised self-regulatory authorities are not projected to result in increased waste disposal volumes that were assessed in the NTS

¹ NTTR is comprised of public lands withdrawn by the United States Congress and, authorized for military use for a period of 20 years; the current “landlord” is the United States Air Force, the ultimate landlord is Bureau of Land Management

Site Wide EIS, they do represent major program changes to DOE's LLW management program. Moreover, these major program changes have raised new policy, regulatory, and long-term environmental management issues that have yet to be collectively assessed or fully disclosed in a single comprehensive DOE document. Issues that should be addressed in such a document include:

- Public disclosure and review of a "common" waste acceptance criteria for the NTS and Hanford LLW disposal sites;
- An assessment of new waste streams that could be excluded from disposal at the Hanford reservation per the bounding analysis contained in the recently released Hanford Solid Waste EIS;
- Evaluation of DOE's self-regulation of LLW disposal activities conducted at NTS and at the Hanford nuclear reservation. (Both the states of Nevada and Washington contend that such an evaluation must be included in an assessment of alternatives to self regulation);
- Assessment of Long-Term Stewardship (LTS) options for DOE's LLW disposal sites to include an evaluation of permanent financing options (e.g., state trust funds) to support LTS management activities. (This is a state equity issue that is directly related to constraints associated with DOE's self regulation of LLW disposal sites at NTS and Hanford.)
- Review of DOE's waste acceptance process to insure LLW proposed by DOE for disposal at the NTS is in fact defense waste, as opposed to LLW generated from commercial activities.
- Review of DOE's waste acceptance process to ensure LLW proposed by DOE for disposal at the NTS is defense waste that is not defined as, and/or was previously defined as, defense "Special Case Waste" or "high activity LLW" exhibiting radiation characteristics considered equal to, or greater than, commercial Greater Than Class C wastes. Such wastes are not appropriate for shallow land burial.

Although most of these waste management issues are probably outside the scope of the SA, they do represent new potential impacts to DOE's waste management program at the NTS. Accordingly, State officials urge the DOE to institute a National Environmental Policy Act (NEPA) process to further agency planning through development of a separate Environmental Assessment (EA) for the NTS waste management program, [see agency planning and decision-making 40 CFR Part 1501.3(b)].

At a minimum, such an assessment should address development of a "common" waste acceptance criterion for NTS and Hanford; it should evaluate a bounding analysis of waste streams in the Nuclear Weapons Complex that could be sent to the NTS; it should disclose findings including any technical constraints and limitations identified in recently completed site specific and composite performances assessments. It should also offer an

evaluation of alternatives to self-regulation including (LTS) management of LLW sites including LTS financing options (i.e., creation of state/private LTS trust funds). Finally, such a document should address questions concerning waste restrictions at the NTS to include LLW considered not suitable for shallow land burial and commercial LLW.

Specific Comments -- by Document Pages Number

S-3 -- It would be useful to include English conversions with the metric values in the document (i.e., cubic feet as well as cubic meters). Historically, DOE/NNSA has reported waste volumes in cubic feet as opposed to cubic meters.

S-4 – No mention is made on page S-4 or in other places in the document about the NTS Underground Test Area (UGTA) program, including the results of the program to date. Since groundwater contamination beneath the NTS is a critical long-term concern, and given it is the leading environmental issue for NTS Environmental Management program, at least in terms of long-term costs, it would seem the program should be discussed in detail under the title of the UGTA program (section 4.2.8).

1-3 – The map on this page includes the modified boundaries resulting from the Military Lands Withdrawal Act of 1999 (Public Law 106-65). This map (or other maps in the document) should depict/address the land use issues associated with the addition of the Pahute Mesa to the NTS withdrawal(s), (i.e., as implemented by PL 106-65). What is the significance of the land use change generally; why did Congress institute the revised withdrawal; and what are the long-term stewardship responsibilities to DOE, if any?

1-6 – The public involvement process is mentioned, but what was the outcome of the process?

3-10 – The time period mentioned in Section 3.1.2.2 (*New waste management missions and facilities*) is different than the time period for the SA as a whole, (i.e., current and proposed programs and activities from now through 2006 – *see page 2-1*). The focus of the SA should not be alerted for just one major program area such as waste management and not other program activities such as the UGTA and/or the soil remediation program.

3-11 – In the right column in Table 3-3 (*page 3-11*), what ten-year period is referenced for waste volumes and number of shipments? What is the rationale for ten years? Given the statement on page S-3 that “additional waste streams are considered that may be generated at, or sent to, the NTS for management from 2002 through 2011. In addition, the statement on page 5-13, which notes: “after 2011, it is anticipated that the proposed repository at Yucca Mountain would dispose of its LLW at the NTS.” DOE officials at DOE/NNSA need to be aware that the State of Nevada would consider LLW generated at the proposed HLW repository at Yucca Mountain to be commercial LLW, and thus not eligible for disposal at the NTS. In any event, the SA presents a confused and un-quantified review of LLW streams and waste acceptance time periods.

3-18 – Given the extensive nature of the Defense Threat Reduction Agency Hard Target Defeat Tunnel Program and the potential for environmental impacts, there is very little discussion of this new activity in the SA. More importantly, the SA fails to make the case that existing NEPA coverage for this activity is “bounded” in the analysis contained in the NTS Site Wide EIS. In fact, the SA fails altogether to declare if there is a NEPA document, either programmatically or site-specific, that addresses environmental affects of this program.

4-8 – There is an inconsistent conclusion between Table 4-2 and the text in section 4.2.3.5. Either there are increased numbers of shipments with a consequent increased impact or there is a problem in the table. In any case, more discussion and analysis of transportation impacts needs to be undertaken in the SA. For example, with the unwritten DOE policy of keeping trucks laden with LLW out of the Las Vegas Valley (i.e. per agreement between DOE/NNSA and State and local governments), does the transportation analysis contained in the NTS Site Wide EIS still apply? The SA fails to mention that truck transport of LLW to the NTS is now confined to several in-state rural highway routes.

4-17 – The discussion in section 4.2.8 should be subdivided into (1) groundwater use/general hydrology, and (2) groundwater contamination beneath the NTS. As mentioned before, the NTS UGTA program is the most significant EM activity being conducted at the NTS. In part, this is because of uncertainties associated with how fast and where contaminants are moving in the groundwater. There is a need to determine if groundwater contaminants are contained within the borders of the NTS land withdrawals. If contaminant in the groundwater moves off the NTS, the State of Nevada would pursue Natural Resource Damage Assessments to mitigate the loss of groundwater along with adverse effects on local land uses. Hence, a more detailed discussion of the UGTA program and its results is needed to substantiate the statement in the SA that says, “the conclusions of the 1996 NTS EIS remain valid for impacts to groundwater” (*see page 4-21*). What are the impacts to groundwater, in terms of ongoing contaminant transport? In fact, State officials contend that DOE is not yet able to confirm that contaminants in the groundwater beneath the NTS will not move beyond the land withdrawals.

5-13 – The capacity for the waste management facility noted in table 5-5 has tripled for LLW, yet the volume has decreased. What is the reason for the increased capacity and why does the SA fail to discuss this expansion? Also, the time period is again in question using the 2002 to 2011 waste projections. What is the time period being analyzed in the SA?

5-17 – The summary statement on this page under Traffic and Transportation is inconsistent with other information in the SA, given changes in DOE’s LLW transportation program undertaken after completion of the NTS Site Wide EIS (i.e, number of shipments on rural routes).

References: There are a number of references that are either e-mails or telephone logs of conversations. Are these available for review? Are these legitimate references for a document of this nature?

Recommendations:

Land Use: The SA indicates that land use issues will not be affected by new site activities proposed at the NTS. However, the document fails to assess changes in land use that would result in new environmental effects, changes in the physical characteristics of the site, and challenges to long-standing legal and regulatory requirements. The SA needs to be amended to include a more realistic and detailed discussion of land use issues, including DOE's commitment to consult with the Department of Interior about the relevance of the existing NTS public land orders.

Soil Remediation: The State's review of the SA indicates there are potential impacts associated with making a soil remediation decision to address "cleanup" of plutonium-contaminated soils on the Nevada Test and Training Range, the Tonopah Test Range and the NTS. Accordingly, and for the reasons outlined in the general comments above, the State of Nevada is encouraging DOE/NNSA to use the National Environmental Policy Act (NEPA) process to further agency planning by developing NEPA documentation to support a soils "cleanup" decision for the referenced "withdrawn" public lands.

Waste Management: The State's review of the SA also indicates there are potential impacts associated with both existing and expected changes in LLW and Mixed LLW disposal activities at the NTS. As with the soils program, and for the reasons outlined in the general comments above, State officials are encouraging DOE/NNSA to use the NEPA process to further agency planning by developing NEPA documentation to support NTS's evolving waste management program.

If you or your staff has any questions about these comments, the State Clearinghouse could arrange an intergovernmental meeting between DOE and State officials to address your concerns.

Sincerely

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