

NUCLEAR POWER

Nevada may sue U.S. over nuclear law's 'constitutionality'

The state of Nevada, which has already filed five lawsuits against the federal government over plans to build a high-level nuclear waste repository at Yucca Mountain, is contemplating a sixth on the constitutionality of the Nuclear Waste Policy Act, attorneys for the state said last week.

After a meeting of the state's legal team in Reno, Nev., Monday and Tuesday, the team's leader, Joseph Egan, said, "We believe we may not win every battle, but we fully intend to win the war."

Egan, chairman of Egan and Associates, a McLean, Va., law firm specializing in nuclear litigation, declined to discuss the specifics of the state's potential arguments against the constitutionality of the 1982 Nuclear Waste Policy Act and its 1987 amendments, which singled out Nevada as the sole site to be studied as a national repository. But Egan said in an interview Thursday that fellow legal team member Charles Cooper, of the Washington law firm Cooper Kirk, views the act as "the greatest encroachment on a state that his firm has yet witnessed."

The meeting was held to refine the state's legal strategy to derail the project in the wake of President Bush's recent signing of a congressional resolution endorsing the Energy Department's plan to develop a repository at Yucca Mountain.

The NWPA challenge would have to

be filed by January — within 180 days of Bush's July 23 signing of the resolution.

"Finally, Nevada's legitimate fight to defeat Yucca Mountain has moved from the political arena to the courts — to a forum where we believe the battle can be won," Egan said in a statement. "Winning any of the five pending suits, which are all based on sound legal merits, will defeat the Yucca Mountain project."

According to Egan, "the heart of the dispute over Yucca Mountain is no longer politics, but safety. The laws and regulations governing the selection of a site for a national nuclear waste repository were designed for that purpose, but those requirements are being deliberately subverted by [DOE]."

In addition to the potential NWPA challenge, Egan said in the interview that weaknesses in DOE's environmental impact statement for Yucca Mountain and the complexity of the Nuclear Regulatory Commission licensing process favor the state. According to Egan, state legal team member Antonio Rossman, who previously led a successful effort to stop the siting of MX missiles in Nevada, has said the Yucca EIS "is the most shameful [National Environmental Policy Act] document he has ever personally seen. It is defective on so many counts that it would not survive legal scrutiny."

Another state legal team member,

William Briggs Jr., of Ross, Dixon & Bell, and a former NRC solicitor, has described the NRC licensing process for Yucca Mountain as "the most complex in history," Egan said. "He intends to hold DOE to the letter and spirit of every law and challenge every technical aspect."

Other team members include Charles Fitzpatrick and Howard Shapar of Egan & Associates; Robert Cynkar, Vince Colatristano and Hamish Hume of Cooper & Kirk; and Roger Moore of the Law Office of Antonio Rossman.

"This is as talented and experienced a legal team as has ever been assembled to take on the federal government on a nuclear issue," Nevada Attorney General Frankie Sue Del Papa said in a statement Tuesday.

Some observers have suggested that now that Congress has endorsed the project, the state should give up its fight and seek benefits from the government, but Del Papa rejected that notion. "Simply put, every one of our cases is strong on legal merits, and we believe absolutely this is the right thing to do," she said.

Egan cited the Waste Isolation Pilot Plant — a transuranic waste repository in New Mexico — as an "illustration of a situation where the state was promised lots of benefits but they never came to fruition." In addition, he said, "those benefits wouldn't make the repository safe."

— *Lira Behrens*