

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 05/11/05**

**SERVED 05/11/05**

Before Administrative Judges:

Thomas S. Moore, Chairman  
Alex S. Karlin  
Alan S. Rosenthal

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository:  
Pre-Application Matters)

Docket No. PAPO-00

ASLBP No. 04-829-01-PAPO

May 11, 2005

MEMORANDUM AND ORDER

(Scheduling Second Case Management Conference and Issues to be Briefed)

On May 4, 2005, at the conclusion of the first case management conference, we set the date for a second case management conference and a schedule for the briefing of a number of issues discussed at that conference. This Memorandum and Order memorializes our instructions at the conference.

We will hold a second case management conference at 9:00 a.m. EDT on Wednesday, May 18, 2005 in the Atomic Safety and Licensing Board Panel's hearing room, third floor, Two White Flint North, 11545 Rockville Pike, Rockville Maryland. The Department of Energy (DOE), the NRC Staff, and the State of Nevada (State) shall, no later than 3:00 p.m. EDT on Monday, May 16, 2005, e-mail to the Board ([PAPO@nrc.gov](mailto:PAPO@nrc.gov)) the names of counsel participating in the conference. Other potential parties, interested Indian Tribes, or interested governmental units that seek to participate in the conference shall also e-mail to the Board the names of counsel or representatives participating in the conference. To expedite entry into the NRC headquarters

complex, counsel for DOE, the NRC Staff, and the State should, no later than 3:00 p.m. EDT on Monday, May 16, 2005, e-mail to the Board (PAPO@nrc.gov) a list of the names of all persons associated with that participant that will be attending the conference. Counsel for other participants and any member of the public who wish to expedite his or her entry into the building on May 18 also should e-mail a similar preregistration.

- A. On or before May 12, 2005, DOE, the NRC Staff, and the State shall, and any other potential party, interested Indian Tribe or interested governmental unit may, file a memorandum addressing the following:
1. Suggested changes, not to exceed ten pages in length, to Appendix A, B, and C of our April 19, 2005 Memorandum, including legal positions and briefing as to whether certain information is incorrect or unnecessary.
  2. A discussion, not to exceed four pages in length, addressing the issue of whether “confidential client discussions regarding legal advice” are covered by the attorney-client or litigation work product privileges.
  3. Agreed or separate positions on the specific level within their organization of the senior official who is authorized to make the determination to assert the deliberative process privilege.
  4. A discussion, not to exceed ten pages in length, addressing what privileges and special protections or procedures, if any, should cover employee concerns program files.
- B. On or before May 12, 2005, DOE shall file a copy of the underlying case management order, transcript extract, or other filing or pleading, if any, in the Spent Fuel Litigation, that addresses or specifies the required content of the privilege logs in that case.
- C. On or before May 13, 2005, the information technology data management specialists or

administrators of DOE, the Staff, and the State shall meet with the Licensing Support Network (LSN) Administrator to discuss the implementation of using the digital data management system (DDMS) for the privilege logs. The specialists or administrators of other potential parties, interested Indian Tribes, or interested governmental units may participate in such meeting and discussion.

D. On or before May 16, 2005, DOE, the NRC Staff, and the State shall, and any other potential party, interested Indian Tribe or interested governmental unit may, file a memorandum addressing the following:

1. A discussion, not to exceed ten pages in length, on the issue of whether the initial LSN certification must include a redacted version of any document that would require redaction under the Freedom of Information Act.
2. A joint (or if necessary separate) proposed protective order and affidavit of non-disclosure covering all protected categories of non-safeguards information (e.g., archeological privilege, privacy information, business-proprietary/confidential information).
3. A discussion, not to exceed ten pages in length, on the meaning of “potential parties” as it applies in this proceeding and specifically to receiving documents under a protective order and affidavit of non-disclosure.

E. On or before July 1, 2005, DOE, the NRC Staff, and the State shall, and any other potential party, interested Indian Tribe or interested governmental unit may, file a joint proposed protective order and affidavit of non-disclosure covering safeguards information, unclassified controlled nuclear information, official use only information, and any similarly sensitive unclassified information. The proposal should include any procedures that would be different from general case management procedures.

Given that all of these issues were discussed at some length during our first case management conference, the Board does not plan to entertain additional discussion or oral argument on these submissions at the second case management conference, except for specific questions that we may pose. Accordingly, the submissions and briefs should respond to arguments made by opposing counsel during the first case management conference, as well as other arguments or points that may be anticipated. Each party or participant should file a single consolidated submission or brief on each date (May 12 and May 16). It should be noted that the page limits set forth above are just that--limits, not minimums. Conciseness is appreciated and preferred.

It is so ORDERED.

The Pre-license Application  
Presiding Officer Board

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Alan S. Rosenthal  
ADMINISTRATIVE JUDGE

*/RA/*

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Alex S. Karlin  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 11, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
U.S. DEPARTMENT OF ENERGY ) Docket No. PAPO-00  
)  
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(High-Level Waste Repository: )  
Pre-Application Matters) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (SCHEDULING SECOND CASE MANAGEMENT CONFERENCE AND ISSUES TO BE BRIEFED) have been served upon the following persons by electronic mail and/or Electronic Information Exchange as denoted by an asterisk (\*).

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LB MEMORANDUM AND ORDER -2-  
(SCHEDULING SECOND CASE MANAGEMENT  
CONFERENCE AND ISSUES TO BE BRIEFED)

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LB MEMORANDUM AND ORDER -3-  
(SCHEDULING SECOND CASE MANAGEMENT  
CONFERENCE AND ISSUES TO BE BRIEFED)

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LB MEMORANDUM AND ORDER -4-  
(SCHEDULING SECOND CASE MANAGEMENT  
CONFERENCE AND ISSUES TO BE BRIEFED)

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[Original signed by Rebecca L. Giitter]

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Dated at Rockville, Maryland,  
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