May 12, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRE-LICENSE APPPLICATION
PRESIDING OFFICER BOARD

In the Matter of	)	Docket No. PAPO-00
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 04-829-01-PAPO
	)	
(High Level Waste Repository: Pre-Application Matters)	)	NEN-02

RESPONSE OF THE NUCLEAR ENERGY INSTITUTE TO
MATTERS IDENTIFIED DURING MAY 4, 2005
CASE MANAGEMENT CONFERENCE

On April 13, 2005, the Pre-License Application Presiding Officer Board ("PAPO Board") issued an order scheduling the first case management conference for May 4, 2005. Thereafter, on April 19, 2005, the Board issued an order directing the Department of Energy ("DEN"), the Nuclear Regulatory Commission ("NRC") Staff, the State of Nevada ("NEV"), and potential parties to be prepared to discuss at the case management conference eighteen specific matters related to the privilege logs and associated procedures for resolving privilege disputes.[1]

Prior to the close of the first case management conference, the PAPO Board announced that it would hold a second case management conference May 18, 2005 and also requested that parties and potential parties submit briefs in response to specified topics to aid the PAPO Board in its deliberations. The Board ordered that

[1] Memorandum (Matters to Addressed at First Case Management Conference)(April 19, 2005)("Memorandum").

briefs be submitted no later than May 12, 2005 on (1) the information necessary to be included on a privilege log to support a claim of attorney/client, work product or deliberative process privilege; (2) the legal basis for a claim of privilege for confidential client discussions regarding legal advice; (3) the position/level of government employees for whom deliberative process privilege may be claimed; and (4) issues related to disclosure of DEN's Yucca Mountain Project ("YMP") Employee Concerns Program ("ECP") files.[2]

Mindful of the PAPO Board's April 19, 2005 order admonishing conference participants to provide succinct responses to PAPO Board inquiries and scrupulously avoid repetitive responses, the Nuclear Energy Institute's ("NEN's") instant submission addresses only two of the four issues identified above: the legal bases for a claim of privilege for confidential client discussions regarding legal advice, and issues related to disclosure of Employee Concerns Program files. With respect to information necessary to be included on a privilege log to support a claim of attorney/client, work product or deliberative process privilege and the position/level of government employees for whom deliberative process privilege may be claimed, NEN adopts in their entirety the arguments and conclusions set forth in DEN's briefs on those topics.

[2] The PAPO Board assigned page limits to each of the topic areas on which it requested a brief.

I. Confidential Client Discussions Regarding Legal Advice and Coverage Under the Attorney-Client or Litigation Work Product Privileges

The PAPO Board asked the parties and potential parties to address the legal basis for protecting confidential client discussions regarding legal advice under the attorney-client or litigation work product privileges.[3] Implicit in the PAPO Board's query is the issue of whether communications among individuals concerning legal advice operates to waive a claim of privilege that might otherwise attach.

This issue was squarely addressed in *Weeks v. Samsung Heavy Industries*, No. 93 C 4899, 1996 WL 341537, at 5 (N.D.Ill. June 20, 1996). In that case, an employee had prepared a document summarizing legal advice given to him by counsel. He then sent the document to his superior during related litigation. The issue was whether the privilege that normally attaches to legal advice communicated by attorneys to a client had been waived when the subordinate prepared the document in question and sent it to his superior. In *Samsung*, the court held unequivocally that no such waiver occurred when the document was prepared and exchanged between the client's two employees.

The preservation of the privilege is not only clear from applicable law, but necessary as a practical matter. It would be of little use for an attorney to be able to provide confidential legal advice to an employee of a client if that advice could not be utilized through its dissemination to other employees unless confidentiality was waived.

[3] *See also* Memorandum at p.3.

Moreover, confidentiality is preserved even when the legal advice is conveyed beyond the client's employees to contractors and consultants.[4] All that is required is that the dissemination of information be in keeping with its asserted confidentiality.[5] Further, the preservation of confidentiality also extends to that pertinent to the work product doctrine.[6]

---

[4] *See FTC v. GlaxoSmithKline*, 294 F.3d 141 (D.C. Cir. 2002).
[5] *Id.* at 147-48.
[6] *See McCook Metals v. Alcoa*, 192 F.R.D. 242, 263 (N.D.Ill. 2000) (work product confidentiality preserved when embodied in documents concerning settlement of litigation and various licensing agreements, including letters between in-house counsel and management regarding litigation and licenses, drafts of a settlement agreement and licensing agreements, and inter-office memos between management personnel discussing legal advice).

II. DEN's Employee Concerns Program Records Should Be Protected In the Yucca Mountain Licensing Proceeding

A. Introduction

The parties present at the first case management conference extensively discussed whether documentary material contained in DEN ECP files related to the Yucca Mountain Project are privileged or otherwise should be protected from disclosure in whole or in part.[7] NEV contended that all such files were documentary material and, with appropriate redaction of particular kinds of information, should be placed on the Licensing Support Network ("LSN") upon certification by DEN.[8] DEN argued that the ECP files should be protected to the greatest extent practicable to maintain the confidentiality of employees who report safety concerns as well as others whose identities or personal information may be contained in YMP ECP files. DEN explained that this level of confidentiality is necessary because DEN's YMP ECP is founded on the fundamental principle that employees should be able to report their health and safety concerns in the strictest of confidence[9] and others in the workforce will report concerns if they are confident that confidentiality will be maintained. DEN argued that the PAPO Board should require NEV to demonstrate its need for disclosure of a given ECP file and that such disclosure should, as a minimum, be subject to a protective order.[10]

---

[7] U.S. Dep't of Energy (High Level Waste Repository: Pre-Application Matters), Transcript of First Case Management Conference (May 4, 2005) at 104-29 (hereinafter "Tr.").
[8] Tr. at 118-19.
[9] *See, e.g.,* Tr. at 104.
[10] Tr. at 114-15, 119.

NEN believes that all personal identifying information contained within the YMP ECP files should be afforded the maximum degree of confidentiality practicable. NEN urges the PAPO Board to prohibit making any YMP ECP record, even if redacted, available via the LSN. The PAPO Board also should require that any disclosure of YMP ECP records be subject to a protective order that allows only counsel for parties to receive redacted copies of the records and prohibits those parties from disclosing any of the information contained therein. Finally, the case management order should require DEN to redact from the YMP ECP records produced in discovery for the YMP licensing proceeding all information necessary to protect the identities of the individual alleger and other individuals named or described therein.

Except in limited circumstances, the Privacy Act prohibits DEN from disclosing records containing identifying information on individuals. Moreover, there are compelling public policy reasons which both form the basis for the NRC's own worker protection policies and bear on the protection of the public health and safety. The combination of statutory requirements and public policy interests favor the nondisclosure of information in the YMP ECP records beyond personal information as defined in the Privacy Act.

B. Privacy Act Protections

The Privacy Act[11] prohibits Federal agencies, including DEN, from disclosing any record maintained by the agency about an individual that contains identifying information on that individual, except in certain circumstances or unless certain

[11] 5 U.S.C. § 552a (2005).

conditions are met.[12] Specifically, the information record on an individual may not be disclosed except pursuant to a written request from, or with the written consent of, the particular individual; or unless disclosure of the record falls under one of twelve enumerated exemptions.[13] Of the twelve, the particular exemption relevant here permits an agency to disclose a record containing identifying information on an individual pursuant to the order of a court of competent jurisdiction.[14] Although the PAPO Board thus *may* enter a case management order requiring DEN to make available YMP ECP records for discovery purposes, "the applicability of the Privacy Act to the materials requested is a relevant factor for the [PAPO Board] to consider in determining the appropriate scope and manner of discovery" in this proceeding.[15]

The Privacy Act reflects Congress' recognition that agency records often contain sensitive personal information.[16] The specific exemptions created by Congress authorizing disclosure only in limited circumstances "reflect a delicate

---

[12] 5 U.S.C. §§ 552a(a)(4), (b).

[13] One of the exemptions provides that an agency may disclose a record if required under 5 U.S.C. § 552, the Freedom of Information Act ("FOIA"). However, the release of an ECP record under FOIA is subject to an analysis similar to that for the Privacy Act. FOIA exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The threshold question is whether the information contained in a record "'applies to a particular individual.'" *New York Times Co. v. NASA*, 920 F.2d 1002, 1006 (D.C. Cir. 1990) (quoting *Washington Post Co. v. Dep't of State*, 456 U.S. 595, 602 (1982). ECP records include information about the individual who raised a safety concern and third parties. Thus, release of any ECP record can be made under FOIA only with "regard to any invasion of personal privacy that may result" and with "regard to whether there is a sufficient public interest in its release to warrant the harm caused by that invasion of privacy." *Id.* Consequently, the extent of disclosure permitted under FOIA, as that which might be permitted under the Privacy Act, is subject to the public policy considerations expounded upon in this brief. In any event, the NRC's discovery rules do not end with FOIA, and the PAPO Board possesses the independent authority under the NRC's discovery rules to protect the interests represented in ECP records. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2) LBP-88-8, 27 NRC 293, 298 (1988).

[14] 5 U.S.C. § 552a(b)(11).

[15] *Laxalt v. McClatchy*, 809 F.2d 885, 889 (D.C. Cir. 1987).

[16] *See id.* (quoting *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1344 (D.C. Cir. 1984).

balance between limiting disclosure of records and not unduly hampering government operations."[17] In the course of discovery a court – or in this case, a Licensing Board – must give appropriate weight to the congressionally enacted policies underlying the protections provided in the Privacy Act.[18]

The NRC regulations for the high-level waste repository proceeding independently provide the Board with ample discretion to fashion and use protective orders in the course of discovery upon a requisite showing of good cause to protect any "person from annoyance, embarrassment, oppression, or undue burden, delay or expense."[19] Where, as here, the records NEV seeks are subject to the Privacy Act, the Board should even more carefully exercise its supervisory responsibility than in the normal discovery context.[20] In fact, "courts have long 'recognized that interests in privacy may call for a measure of extra protection.'"[21] The standard by which to determine whether such an interest exists is to see if "the actual content of the record has the potential to cause harm to the affected party."[22] Additional language contained in the Privacy Act informs the definition of "harm." The Privacy Act requires agencies to ensure the security and confidentiality of records by establishing administrative, technical, and physical safeguards.[23]

---

[17] *Doe v. DiGenova,* 779 F.2d 74, 84 (D.C. Cir. 1985).
[18] *Laxalt,* 809 F.2d at 889 (quoting *Friedman* 738 F.2d at 1344).
[19] 10 CFR § 2.1018(c)(1). Indeed, the PAPO Board is well equipped to "fashion appropriate orders and procedures to allow full litigation of contested issues without unnecessarily violating personal privacy. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-87-13, 26 NRC 400, 405 (Nov. 25, 1987).
[20] *See Laxalt,* 809 F.2d at 889.
[21] *In re Sealed Case (Medical Records),* 381 F.3d 1205, 1215 (D.C. Cir. 2004)(citing Fed. R. Civ. P. 26(b) advisory committee's note (1970).
[22] *Id.*
[23] 5 U.S.C. 552a(e)(10).

Agencies must undertake these measures to prevent "substantial harm, embarrassment, inconvenience, or unfairness to *any* individual on whom information is obtained."[24]

C. Compelling Policy Interests Require Greater Protection of Information Contained in ECP Records

Beyond the statutory prohibitions contained in the Privacy Act, compelling policy bases support limiting disclosure of information contained in ECP records. At issue is information not necessarily protected by the Privacy Act, but disclosure of which would undercut the fundamental purpose and practical effectiveness of any employee concerns program. Specifically, any information that could suggest the identity of individuals who have raised a concern or who are otherwise identified in the record should be redacted from any YMP ECP record prior to that record being made available under a protective order.

The compelling need to limit disclosure of this information becomes even more evident upon a brief examination of the regulatory context in which employee concerns programs operate. Indeed, the NRC's own strongly held view that nuclear safety is affected by the ability of workers to identify and report safety concerns emphasizes the need to limit disclosure of this additional information.[25]

---

[24] The Privacy Act obviously contemplates the situation in which an agency record contains personal information about one individual. ECP files, however, often also contain personal information about additional individuals who are identified in the course of reporting the safety concern or an ensuing investigation. By extension, this personal information also should be protected under the Privacy Act. Indeed, the Privacy Act requires agencies to protect against harm that might befall "*any* individual." 5 U.S.C. § 552a(e)(10)(emphasis added).

[25] NRC Policy Statement, *Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation*, 61 Fed. Reg. 24336 (May 14, 1996)("NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of

The NRC has construed the general provisions of the Atomic Energy Act of 1954, as amended, to confer authority to take enforcement action against licensees who discriminate against nuclear employees for raising safety concerns.[26] In 1982, the NRC promulgated comprehensive regulations prohibiting all licensees from discriminating against employees for engaging in protected activities.[27] 10 CFR § 50.7 is applicable to reactor licensees and 10 CFR § 63.9 is applicable to DEN as an applicant for a license for the Yucca Mountain repository. Since 10 CFR §§ 50.7 and 63.9 limit enforcement action to discrimination alleged to have been taken against a particular employee, the NRC issued a Policy Statement in 1996 articulating the Commission's expectation that NRC licensees and contractors would maintain a Safety Conscious Work Environment ("SCWE") for the entirety of the workforce.[28] The Policy Statement defines a SCWE as one in which "employees feel free to raise safety concerns, both to their own management and to the NRC, without fear of retaliation."[29]

Although there are many ways to foster a SCWE, licensees have adopted a method by which an employee can report a safety concern outside the routine lines

---

potential safety concerns and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility").

[26] In 1973, under the authority of section 161 of the AEA, the AEC promulgated 10 CFR § 19.16 which prohibited licensees from discriminating against any employee who engaged in specified protected activities. Subsequently, an NRC Appeal Board ruled in *Union Electric Co.* that, under the AEA, the Commission has authority to take enforcement action against a nuclear plant licensee for discriminating against an employee for raising a safety issue. *Union Electric Co.*, (Callaway Plant, Units 1 and 2), LBP-78-31, 8 NRC 366 (1978), aff'd, ALAB-527, 9 NRC 126 (1979). In 1978, Section 210 was added to the Energy Reorganization Act of 1974 to provide nuclear employees with the right to obtain a personal remedy.

[27] 47 Fed. Reg. 30452 (July 14, 1982).

[28] 61 Fed. Reg. at 24,336.

[29] *Id.* at 24,366.

of communication.[30] Many reactor licensees, as well as DEN, have instituted an ECP because it provides a "safe haven" for employees who wish to report a safety concern but may not be comfortable making the report in the regular course of business. As DEN states in its ECP guidelines: "Confidentiality is the cornerstone of an effective ECP and the investigation of concerns."[31]

ECPs incorporate specific features to reinforce their "safe haven" purpose. For example, the ECP office usually is located away from mainstream employee activities to protect the confidentiality of those entering or leaving the ECP office. Because some employees may not come forward unless their identity is protected from public disclosure, ECPs maintain a reporting relationship that is separate from line management. Also, ECPs accept anonymous reports of safety concerns[32] in addition to treating the employee's identity as confidential.[33] Further, ECPs maintain physical security for ECP records,[34] minimize the circle of individuals involved in ECP investigations, and operate on a need-to-know basis.[35] Indeed, the NRC evaluates the effectiveness of a licensee's ECP based on these features.[36]

---

[30] DEN maintains an agency-wide ECP program as well as one separately dedicated to the Yucca Mountain project. DOE Order 442.1A, Department of Energy Employee Concerns Program (June 6, 2001); Office of Civilian Radioactive Waste Management ("OCRWM") Concerns Program, Procedure AP-32.1, (Mar. 1, 2004); Bechtel SAIC Company, LLC, Procedure LP-GEN-001-BSC, Employee Concerns Program (Apr. 30, 2003); *see also* DOE Guide 442.1-1, Department of Energy Employee Concerns Program Guide (Feb. 1, 1999).

[31] Department of Energy Employee Concerns Program Guide, DOE G-442.1-1 at 8.

[32] *See, e.g.*, OCRWM Procedure AP-32.1 at 4.

[33] While offering confidential treatment for employees reporting concerns, the ECP staff also informs employees that there are certain limited circumstances – either mandated by statute or because an imminent safety threat is involved – which will compel disclosure of their identity. *See* DOE G 442.1-1 at 8.

[34] NRC Inspection Manual, Inspection Procedure 40001, Resolution of Employee Concerns (June 3, 1997) at 6.

[35] *See, e.g.*, Bechtel SAIC Procedure LP-GEN-001-BSC at 6.

[36] NRC Inspection Procedure 40001.

The SCWE concept is not just directed at protecting the individual who reports a safety concern from discrimination. Rather, SCWE is intended to apply to the nuclear workforce as a whole, and licensee management is expected to implement it through a variety of concrete actions (*e.g.*, issuing a written policy on SCWE; providing training on SCWE concepts and the prohibition on discrimination; and establishing an ECP). An important corollary to the NRC's expectations regarding SCWE is that licensees may not take any action which would or could be perceived by the workforce to "chill" the environment such that workers would be hesitant to come forward with nuclear safety concerns.[37]

Application of this broad regulatory concept of a "chilled environment" or "chilling effect" is intended to ensure that those who may not be directly involved in a particular matter (but are interviewed, or otherwise contacted, and whose names or other information are contained in ECP records) *are not even indirectly* deterred from coming forward with a safety concern at some later point. Thus, the imperative for all NRC licensees to avoid a "chilled" work environment, and for employees not even to perceive a potential for retaliation if they report or are involved in a safety concern, must be heavily weighed as the PAPO Board reaches its determination on the appropriate level of protection for YMP ECP records.

In addition to its Policy Statement on SCWE, the Commission issued another Policy Statement articulating the need to protect, to the greatest extent practicable,

---

[37] The NRC's "increased interest" in ECPs prompted it to issue Inspection Procedure 40001 to "aid inspectors in reviewing licensee programs for the phenomenon known as the 'chilling effect' (a term that refers to the negative effect a hostile environment may have on employees raising concerns to the NRC or on those who may want to raise concerns)." NRC Inspection Procedure 40001, at 4.

the identities of individuals who raise safety concerns.[38] The Commission recognizes that public release of identifying information could (1) lead to reprisals against the alleger; (2) deter other individuals from coming forward with safety-related concerns; and (3) jeopardize the effectiveness of NRC's oversight of its licensees, which relies in part on individuals coming forward with information.[39] As a consequence, the NRC itself "make[s] all reasonable efforts not to disclose the identity of an alleger outside the agency."[40] The identity of an alleger is provided to other NRC staff only on a need-to-know basis.[41] The NRC secures any documents containing alleger identities in locked cabinets with controlled access and does not place such material in the public document room.[42] The NRC provides additional protection to those who have requested to remain confidential.[43] For example, in the case where a worker requests that the NRC conduct an inspection into potential adverse working conditions, he or she may request, and the NRC will ensure, that his or her name, and the names of any other individuals referred to in the investigation request, will not be disclosed by the NRC.[44]

The NRC's own policy for protecting the identities of individuals reporting safety concerns and third parties makes eminent sense given the sensitivity of the

---

[38] *Final Policy Statement, Protecting the Identity of Allegers and Confidential Sources*, 61 Fed. Reg. 25,924, 25,926 (1996) ("Policy").

[39] *Id.*

[40] *Id.* NEN recognizes that circumstances exist where the identity of an alleger must be disclosed, such as pursuant to an order of a court or an NRC adjudicatory board.

[41] *Id.*

[42] *Id.*

[43] *See id.* at 25,926-27. NRC case law establishes that a limited privilege may exist for the identity of individuals who have expressly asked for or been promised anonymity for raising a safety concern. *Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-59, 16 NRC 533, 537 (1982).

[44] 10 CFR § 19.17(a); 61 Fed. Reg. at 25,926.

information on and the circumstances surrounding reported safety concerns. Simply stated, "[c]lairvoyance is not needed to appreciate that word of the breach of confidentiality would spread and the likelihood of informants coming forward with safety related information in future cases be diminished."[45] Thus, the need for information in a particular case must be balanced with the recognized, long term need for safety related information to be freely provided by individuals.[46]

D. Conclusion

The PAPO Board's order should protect YMP ECP information that discloses or could lead to the disclosure of identifying information regarding an individual who reports a safety concern or others whose identities are contained in ECP records. The PAPO Board has ample legal authority to order such protection under the Privacy Act, 10 CFR § 2.1018, and pursuant to NRC policy directives contained in the agency's policies on SCWE and confidentiality of allegers. Further, the Board should prohibit redacted documents from being placed on the LSN based on the clear need to protect against any "chilling effect" which is likely to arise as a result of said disclosure.

Dated: May 12, 2005

Ellen C. Ginsberg

Ellen C. Ginsberg, Deputy General Counsel
Nuclear Energy Institute ("NEI")
1776 I Street, N.W., Suite 400
Washington, D.C. 20006-3708
Telephone: 202-739-8140
Facsimile: 202-785-4019
E-mail : ecg@nei.org

[45] *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 477 (1981), *reconsideration of decision not to review sua sponte denied*, CLI-81-28, 14 NRC 933 (1981).
[46] *See id.*; *see also* 61 Fed. Reg. at 25,925.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

May 12, 2005

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal

In the Matter of	)	
	)	Docket No. PAPO-00
U.S. DEPARTMENT OF ENERGY	)	
	)	ASLBP No. 04-829-01-PAPO
(High Level Waste Repository:	)	
Pre-Application Matters)	)	NEN – 02
	)	

RESPONSE OF THE NUCLEAR ENERGY INSTITUTE TO
MATTERS IDENTIFIED DURING MAY 4, 2005
CASE MANAGEMENT CONFERENCE CERTIFICATE OF SERVICE

I hereby certify that copies of the Nuclear Energy Institute, Inc.'s ("NEN") Response of the Nuclear Energy Institute to Matters Identified During May 4, 2005 Case Management Conference have been served upon the following persons by Electronic Information Exchange and/or electronic mail as denoted by an asterisk (*).

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
Washington, D.C. 20555-0001
Thomas S. Moore, Chair*
Administrative Judge
E-mail: PAPO@nrc.gov
Alex S. Karlin*
Administrative Judge
E-mail: PAPO@nrc.gov
Alan S. Rosenthal*
Administrative Judge
E-mail: PAPO@nrc.gov &
rsnthl@comcast.net

G. Paul Bollwerk, III*
Administrative Judge
E-mail: PAPO@nrc.gov
Anthony C. Eitreim, Esq.*
Chief Counsel
E-mail: PAPO@nrc.gov
James M. Cutchin*
E-mail: PAPO@nrc.gov
Bethany L. Engel*
E-mail: PAPO@nrc.gov
Amy C. Roma, Esq.*
E-mail: PAPO@nrc.gov
Jonathan Rund*
E-mail: PAPO@nrc.gov

RESPONSE OF THE NUCLEAR ENERGY INSTITUTE TO MATTERS INDENTIFIED DURING MAY 4, 2005 CASE MANAGEMENT CONFERENCE

Susan Stevenson-Popp*
E-mail: PAPO@nrc.gov
Christopher M. Wachter*
E-mail: PAPO@nrc.gov
Daniel J. Graser*
LSN Administrator
E-mail: djg2@nrc.gov
ASLBP HLW Adjudication
E-mail:
ASLBP_HLW_Adjudication@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop - O-16 C1
Washington, D.C. 20555-0001
Hearing Docket*
E-mail: hearingdocket@nrc.gov
Andrew L. Bates*
E-mail: alb@nrc.gov
Adria T. Byrdsong*
E-mail: atb1@nrc.gov
Emile L. Julian, Esq.*
E-mail: elj@nrc.gov
Evangeline S. Ngbea*
E-mail: esn@nrc.gov
Rebecca L. Giitter*
E-mail: rll@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Congressional Affairs
Mail Stop -O-17A3
Thomas R. Combs*
E-mail: trc@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, D.C. 20555-0001
Karen D. Cyr, Esq.
General Counsel
E-mail: kdc@nrc.gov
Shelly D. Cole, Esq.*
E-mail: sdc1@nrc.gov
David A. Cummings, Esq.*
E-mail: dac3@nrc.gov
Gwendolyn D. Hawkins*
E-mail: gxh2@nrc.gov
Janice E. Moore, Esq.*
E-mail: jem@nrc.gov
Trip Rothschild, Esq.
E-mail: tbr@nrc.gov
Tyson R. Smith, Esq.*
E-mail: trs1@nrc.gov
Mitzi A. Young, Esq.*
E-mail: may@nrc.gov
Marian L. Zobler, Esq.*
E-mail: mlz@nrc.gov
OGCMailCenter*
E-mail: OGCMailCenter@nrc.gov

Hunton & Williams LLP
Counsel for the U.S. Department of Energy
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
W. Jeffery Edwards, Esq.*
E-mail: jedwards@hunton.com
Kelly L. Faglioni, Esq.*
E-mail: kfaglioni@hunton.com
Melissa Grier*
E-mail: mgrier@hunton.com
Donald P. Irwin, Esq.*
E-mail: dirwin@hunton.com
Stephanie Meharg*
E-mail: smeharg@hunton.com
Edward P. Noonan, Esq.*
E-mail: enoonan@hunton.com
Audrey B. Rusteau*
E-mail: arusteau@hunton.com
Michael R. Shebelskie, Esq.*
E-mail: mshebelskie@hunton.com
Christopher A. Updike*
E-mail: cupdike@hunton.com
Belinda A. Wright*
E-mail: bwright@hunton.com

RESPONSE OF THE NUCLEAR ENERGY INSTITUTE TO MATTERS INDENTIFIED DURING MAY 4, 2005 CASE MANAGEMENT CONFERENCE

Egan, Fitzpatrick, Malsch & Cynkar, PLLC
Counsel for the State of Nevada
The American Center at Tysons Corner
8300 Boone Boulevard, Suite 340
Vienna, VA 22182
Robert J. Cynkar, Esq.*
E-mail: rcynkar@nuclearlawyer.com
Joseph R. Egan, Esq.*
E-mail: eganpc@aol.com
Charles J. Fitzpatrick, Esq.*
E-mail: cfitzpatrick@nuclearlawyer.com
Jack Kewley*
E-mail: jkewley@nuclearlawyer.com
Martin G. Malsch, Esq.*
E-mail: mmalsch@nuclearlawyer.com
Susan Montesi*
E-mail: smontesi@nuclearlawyer.com
Nakita Toliver*
E-mail: ntoliver@nuclearlawyer.com

U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue, S.W.
Washington, D.C. 20585
Martha S. Crosland*
E-mail: martha.crosland@hq.doe.gov

U.S. Department of Energy
Office of Civilian Radioactive Waste Mgmt
Office of Repository Development
1551 Hillshire Drive
Las Vegas, NV 89134-6321
W. John Arthur, III, Deputy Director
E-mail: john_arthur@ymp.gov

U.S. Department of Energy
Office of Civilian Radioactive Waste Mgmt
Office of Information Mgmt
Mail Stop 523, P.O. Box 30307
North Las Vegas, NV 89036-0307
Harry Leake
E-mail: harry_leake@ymp.gov
Mark Van Der Puy
E-mail: mark_vanderpuy@ymp.gov

U.S. Department Of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
George W. Hellstrom*
E-mail: george.hellstrom@ymp.gov

Yucca Mountain Project, Licensing Group,
DOE/BSC
Jeffrey Kriner*
E-mail: jeffrey_kriner@ymp.gov

Lander County Nuclear Waste Oversight
Program
3185 South Humboldt St.
Battle Mountain, NV 89820
Loreen Pitchford*
E-mail: gb4@charter.net
Deborah Teske*
E-mail: dteske@Landercounty.com

Lincoln County (NV) Nuclear Oversight Prgm
100 Depot Ave., Suite 15; P.O. Box 1068
Caliente, NV 89008-1068
Lea Rasura-Alfano, Coordinator
E-mail: jcciac@co.lincoln.nv.us

RESPONSE OF THE NUCLEAR ENERGY INSTITUTE TO MATTERS INDENTIFIED DURING MAY 4, 2005 CASE MANAGEMENT CONFERENCE

Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Robert Loux, Executive Director
Email: bloux@nuc.state.nv.us
Steve Frishman, Tech. Policy Coordinator
E-mail: ssteve@nuc.state.nv.us

Nuclear Waste Technical Review Board
Victoria Reich
E-mail: reich@nwtrb.gov

Nevada Nuclear Waste Task Force
Alamo Plaza, 4550 W. Oakley Blvd., Suite 111
Las Vegas, NV 89102
Judy Treichel, Executive Director
E-mail: judynwtf@aol.com

State of Nevada (NV)
100 N. Carson Street
Carson City, NV 89710
Marta Adams
E-mail: madams@govmail.state.nv.us

Churchill County (NV)
155 North Taylor Street, Suite 182
Fallon, NV 89406
Alan Kall
E-mail: comptroller@churchillcounty.org

Clark County (NV) Nuclear Waste Division
500 S. Grand Central Parkway
Las Vegas, NV 89155
Irene Navis
E-mail: iln@co.clark.nv.us
Engelbrecht von Tiesenhausen
E-mail: evt@co.clark.nv.us

Eureka County (NV) Yucca Mtn Info Ofc
P.O. Box 990
Eureka, NV 89316
Laurel Marshall, Program Coordinator
E-mail: ecmarshall@eurekanv.org

Intertech Services Corporation (for Lincoln County)
P.O. Box 2008
Carson City, NV 89702-2008
Dr. Mike Baughman
E-mail: bigboff@aol.com

Mineral County (NV) Board of County Commissioners
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Administrator Office of Nuclear Projects
E-mail: mineral@oem.hawthorne.nv.us

Nye County (NV) Department of Natural Resources & Federal Facilities
1210 E. Basin Road, Suite 6
Pahrump, NV 89048
David Swanson
E-mail: dswanson@nyecounty.net

Nye County (NV) Regulatory/Licensing Adv.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy
E-mail: mrmurphy@cmc.net

RESPONSE OF THE NUCLEAR ENERGY INSTITUTE TO MATTERS INDENTIFIED DURING MAY 4, 2005 CASE MANAGEMENT CONFERENCE

White Pine County (NV) Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
(Heidi Williams, Adm. Assist.)
E-mail: wpnucwst1@mwpower.net

Inyo County (CA) Yucca Mtn Nuclear Waste
Repository Assessment Office
P.O. Drawer L
Independence, CA 93526
Andrew Remus, Project Coordinator
E-mail: aremus@gnet.com

Abby Johnson
617 Terrace St.
Carson City, NV 89703
E-mail: abbyj@gbis.com

National Congress of American Indians
1301 Connecticut Ave. NW - Second floor
Washington, D.C. 20036
Robert I. Holden, Director
Nuclear Waste Program
E-mail: robert_holden@ncai.org

Public Citizen
215 Pennsylvania Ave, SE
Washington, D.C. 20003
Michele Boyd, Legislative Representative*
Critical Mass Energy and Environment
E-mail: mboyd@citizen.org

Ross, Dixon & Bell
2001 K Street N.W.
Washington D.C. 20006-1040
William H. Briggs
E-mail: wbriggs@rdblaw.com

Environment Protection Agency
Ray Clark
E-mail: clark.ray@epa.gov

Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, D.C. 20006-3708
Michael A. Bauser, Esq.*
Associate General Counsel
E-mail: mab@nei.org
Robert W. Bishop, Esq.
E-mail: rwb@nei.org
Ellen C. Ginsberg, Esq.
E-mail: ecg@nei.org
Rod McCullum
E-mail: rxm@nei.org
Steven P. Kraft
E-mail: spk@nei.org

White Pine County
City of Caliente
Lincoln County
Jason Pitts*
E-mail: idt@idtservices.com

U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Mail Stop - T-7 F3
Washington, D.C. 20555-0001
Jeffrey A. Ciocco*
Email: jac3@nrc.gov

Dated: May 12, 2005

Ellen C. Ginsberg
Counsel for Nuclear Energy Institute, Inc. ("NEN")