

June 8, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

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

JOINT SUBMISSION OF PROPOSED PRIVILEGE LOG  
ELEMENTS FOR CERTAIN PRIVILEGES

As directed by the Pre-License Application Presiding Officer Board ("PAPO") during the Second Case Management Conference, the Nuclear Regulatory Commission Staff ("Staff"), the Department of Energy ("DOE"), and the State of Nevada ("State") have developed the attached privilege log elements for the privacy, business/proprietary, archeological, and law enforcement privileges, as well as for employee concern files. See Transcript of Second Case Management Conference, May 18, 2005 at 375-78. Despite diligent effort, the parties were unable to finalize these proposed elements with sufficient time to make the documents available for public review and comments prior to filing. However, the parties are amenable to publicly posting the documents and accepting comments subsequent to filing if the PAPO so prescribes.

Respectfully submitted,

**/RA/**

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Martin G. Malsch  
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Dated at Rockville, Maryland  
this 8<sup>th</sup> day of June, 2005

## APPENDIX D

### Business/Proprietary:

10 C.F.R. § 2.390(a)(4)

1. Title and date of document.
2. LSN accession number.
3. Statement of facts supporting the assertion that:
  - a. the information being withheld:
    - i. has been held in confidence by its owner;
    - ii. is of a type customarily held in confidence by its owner and, the basis therefor;
    - iii. is not available in public sources;
    - iv. was not generated by federal state or local government;
  - b. the disclosure of such information is likely to cause substantial harm to the competitive position of the owner of the information;  
and
  - c. the information will either not be used as a basis for a governmental action in this proceeding or, if it will be so used, the demonstrated concern for protection of the competitive position outweighs the right of the public to be fully apprised as to the bases for the governmental action in this proceeding.
4. The name, job title or capacity, of the appropriate official who provided the statement of facts supporting the assertion of the privilege.
5. The degree of confidentiality with which the document was treated at the time of its creation and transmission and subsequently.

## APPENDIX E

Archeological Privilege (16 U.S.C. § 470hh):  
10 C.F.R. § 2.390(a)(3)

1. Title and date of the document.
2. LSN accession number.
3. Statement of facts supporting the assertion that the information being withheld concerns the nature or location of any archeological resource for which the excavation or removal requires a permit or other permission.
4. The name, job title or capacity, of the appropriate official who provided the statement of facts supporting the assertion of the privilege.

## APPENDIX F

### Privacy Privilege

10 C.F.R. § 2.390(a)(6)

1. Title and date of document.
2. LSN accession number.
3. Information falling within one of the following enumerated categories is presumptively privileged. Other than identifying which category the withheld information falls into, no further information would be required:
  - a. Medical Condition;
  - b. Personal Identifiers:
    - i. social security number;
    - ii. date of birth;
    - iii. place of birth;
    - iv. home address;
    - v. home phone number;
    - vi. home email address;
    - vii. passport number;
    - viii. drivers license or automobile tag number;
  - c. Employee Identifiers:
    - i. badge number;
    - ii. employee number;
    - iii. payroll number;
  - d. Financial Information:
    - i. credit or debit card number;
    - ii. bank checking or savings account number;
    - iii. brokerage account number;
  - e. Foreign Citizenship Information;
  - f. Employment Related Information:
    - i. employment letters;
    - ii. salary and compensation for non-federal employees;
    - iii. security clearances;
  - g. Future Leave or Travel plans.
4. For all other categories of withheld information a statement of facts is required supporting the assertion that:
  - a. the withheld information:
    - i. applies to a particular identifiable individual;
    - ii. is of such a nature that there is an expectation of privacy;
    - iii. is not well-known or widely available within the public domain; and
  - b. the disclosure of that information would clearly constitute an unwarranted invasion of personal privacy (See *e.g.*, *Dep't of Air Force v. Rose*, 425 U.S. 352, 372-74 (1976)).

## APPENDIX G

### Law Enforcement

10 C.F.R. § 2.390(a)(7)

1. Title and date of document.
2. LSN accession number.
3. The name, job title or capacity, of the appropriate official who made the determination that the withheld information meets the requirements of the law enforcement privilege.
4. Statement of facts supporting the assertion that:
  - a. the information was compiled for law enforcement purposes;
  - b. the information involved the civil or criminal enforcement of a statute, regulation, or order within the authority of the agency asserting the privilege;
  - c. the disclosure of the information:
    - i. could reasonably be expected to interfere with enforcement proceedings;
    - ii. would deprive a person of a right to a fair trial or an impartial adjudication;
    - iii. could reasonably be expected to constitute an unwarranted invasion of personal privacy;
    - iv. could reasonably be expected to disclose the identity of a confidential source;
    - v. would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law; or
    - vi. could reasonably be expected to endanger the life or physical safety of any individual.
5. The degree of confidentiality with which the document was treated at the time of its creation and transmission and subsequently.

## APPENDIX H

### Employee Concerns and Similar Program Documents Containing Identifying Information

1. Title and date of document.
2. LSN accession number.
3. Description of the withheld information that identifies an individual who reports a concern, who is interviewed in the course of a concern investigation, or against whom an allegation has been made and, if not self-evident from the description, a statement of facts supporting an assertion that the redacted information identifies an individual who reports a concern, who is interviewed in the course of a concern investigation, or against whom an allegation has been made.
4. The name, job title or capacity, of the appropriate official who made the determination that the redacted information identifies an individual who reports a concern, who is interviewed in the course of a concern investigation, or against whom an allegation has been made.
5. For information redacted on some other basis, an identification of the asserted privilege and provision of the information otherwise required in support of such privilege assertion.

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Pre-Application Matter)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "JOINT SUBMISSION OF PROPOSED PRIVILEGE LOG ELEMENTS FOR CERTAIN PRIVILEGES" in the above captioned proceeding have been served on the following persons this 8<sup>th</sup> day of June, 2005, by electronic mail, and/or Electronic Information Exchange as denoted by an asterisk (\*).

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