

July 8, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION 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)	)	

**DEPARTMENT OF ENERGY'S SUBMISSION OF A PROPOSED  
JOINT PROTECTIVE ORDER FOR PROTECTED SENSITIVE INFORMATION**

As directed by the Pre-License Application Presiding Officer Board, the Nuclear Regulatory Commission Staff (Staff), Department of Energy (DOE), and the State of Nevada (State) submit the accompanying Joint Proposed Protective Order for Protected Sensitive Information (Protective Order). Other interested participants in this proceeding have not had an opportunity to review and comment on this Protective Order.

The Protective Order covers four categories of unclassified protected sensitive information: (1) Safeguards Information; (2) Unclassified Controlled Nuclear Information; (3) certain types of Official Use Information; and (4) Naval Nuclear Propulsion Information. The parties have reached agreement on all but two provisions of the Protective Order: paragraphs B.1.i and B.5. Both of these provisions concern the requirements for demonstrating "need to know" in order to gain access to certain of the information covered by the Protective Order. The language supported by the Staff and DOE for paragraph B.1.i appears in normal typeface, while the State's proposed language for paragraph B.1.i appears in bold typeface. The State's

proposed language for paragraph B.5 also appears in bold typeface, while the Staff and DOE oppose the inclusion of such language.

The parties will separately submit memoranda in support of their positions.

**Respectfully submitted,**

**U.S. DEPARTMENT OF ENERGY**

By Michael R. Shebelskie

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(High-Level Waste Repository:	)	
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**PROPOSED PROTECTIVE ORDER FOR PROTECTED SENSITIVE INFORMATION**

This Protective Order governs the disclosure and use of certain protected sensitive information produced in this proceeding.<sup>1</sup> Notwithstanding any Order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated

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<sup>1</sup> The provisions of this Protective Order do not apply to NRC staff, counsel, consultants, and contractors with respect to protected sensitive information that the NRC is entitled to receive apart from its role as a litigant in this proceeding (*e.g.*, information available to, or required to be submitted to, the NRC by statute, regulation, or license condition or information submitted to the NRC in support of a requested licensing action). Such information is subject to internal NRC requirements governing the treatment of protected sensitive information. *See* NRC Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program." The provisions of this Protective Order do apply to NRC staff, counsel, consultants, and contractors with respect to protected sensitive information that NRC would not be entitled to receive except by virtue of an Order in this proceeding. The provisions of this Protective Order also do not apply to Department of Energy (DOE) staff, counsel, consultants, and contractors with respect to protected sensitive information in this proceeding because such information is otherwise subject to protection pursuant to its internal DOE Orders. *See* DOE Order 471.1A (Identification and Protection of Unclassified Controlled Nuclear Information) (Approved June 30, 2000); DOE Order 471.3 (Identifying and Protecting Official Use Only Information) (Approved April 9, 2003); DOE Order 471.2A (Information Security Program) (Approved March 27, 1997). Further the provisions of this Protective Order do not limit access to protected sensitive information by persons authorized to receive such information pursuant to 10 C.F.R. Part 73 (Safeguards Information) or 10 C.F.R. Part 1017 (Unclassified Controlled Nuclear Information). Upon filing a motion with the PAPO Board, other Presiding Officer in this proceeding, or the Commission, the provisions of this Protective Order are subject to such modifications as may be necessary to conform to revisions to 10 C.F.R. Part 73, 10 C.F.R. Part 1017, 15 C.F.R. Part 744, 22 C.F.R. Part 120, 32 C.F.R. Part 250, and internal DOE Orders, following notice and comment.

by the Pre-license Application Presiding Officer Board (PAPO Board), another Presiding Officer in this proceeding, or the Commission.

As used herein, "protected sensitive information" means any: (1) Safeguards Information (SGI) as defined in 42 U.S.C. § 2167 (§ 147 of the AEA) and subject to the requirements of 10 C.F.R. Part 73 or Commission Order<sup>2</sup>; (2) Unclassified Controlled Nuclear Information (UCNI) as defined in 42 U.S.C. § 2168 (§ 148 of the AEA) and subject to the requirements of 10 C.F.R. Part 1017 or DOE Order<sup>3</sup>; (3) Official Use Only (OUO) information designated by DOE<sup>4</sup>; and (4) Unclassified Naval Nuclear Propulsion Information (NNPI) designated by DOE.<sup>5</sup>

The disclosure, handling, and use of protected sensitive information in this proceeding shall be governed by the requirements set forth below, and by execution of a Non-Disclosure

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<sup>2</sup> SGI is a special category of sensitive unclassified information authorized by § 147 of the Atomic Energy Act (AEA) of 1954, as amended, to be protected from inadvertent release and unauthorized disclosure. The criteria for designating special nuclear material and power reactor information as SGI, as well as associated restrictions on access to and protection of SGI, are codified in 10 C.F.R. Part 73.

<sup>3</sup> UCNI is a special category of sensitive unclassified information authorized by § 148 of the AEA, as amended, to be protected from inadvertent release and unauthorized disclosure. The criteria for designating and protecting UCNI are codified in 10 C.F.R. Part 1017.

<sup>4</sup> OUO, for purposes of this Protective Order, is a designation applied to certain DOE security-related information protected under Exemption 2 of the Freedom of Information Act (5 U.S.C. § 552(b)). This information includes critical infrastructure, vulnerability assessments, inspection guidelines, and evaluations of critical nuclear systems, facilities, stockpiles and other similar assets. Such OUO information is not intended for public dissemination because its disclosure could harm the public by assisting an adversary of the United States to breach security measures and circumvent applicable law. The designation and protection of such information is governed by internal DOE Order 471.3 (Identifying and Protecting Official Use Only Information).

<sup>5</sup> NNPI concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of the naval nuclear powered ships or prototypes, including the associated nuclear support facilities. The disclosure of NNPI is restricted by 10 U.S.C. § 130 and 15 C.F.R. Part 744, 22 C.F.R. Part 120, and 32 C.F.R. Part 250. The designation and protection of such information is governed by NAVSEAINST 5511.32B (Safeguarding of Naval Nuclear Propulsion Information) (Approved Dec. 22, 1993), as referenced in DOE Order 471.2A (Information Security Program) (Approved March 27, 1997).

Affidavit in the form attached hereto. Further, this Protective Order and attached Non-Disclosure Affidavit should be construed consistent with 10 U.S.C. § 130, and 42 U.S.C. §§ 2167, 2168, and 2231 (§§ 147, 148, and 181 of the AEA) and the regulations promulgated thereunder.

## **DISCLOSURE AND USE OF PROTECTED SENSITIVE INFORMATION**

This section of the Protective Order governs the disclosure and use of protected sensitive information contained in or concerning the application to be submitted by DOE for a high level waste geologic repository at Yucca Mountain, Nevada.

Participants,<sup>6</sup> and counsel, consultants, assistants and others representing a participant, shall be permitted access to protected sensitive information only if they have: (1) completed and served on the originator of the protected sensitive information a documented plan to establish, implement and maintain an information protection system, including cyber security, that includes the applicable measures for controlling protected sensitive information while in use or in storage in accordance with applicable regulations and internal DOE Orders,<sup>7</sup> which the originator of the protected sensitive information has approved; and (2) executed a Non-Disclosure Affidavit in the form attached to this Protective Order.<sup>8</sup> Such a documented plan may include an agreement to use and store protected sensitive information only in an appropriate NRC or DOE facility.

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<sup>6</sup> The term "participant" means any party, potential party, or interested governmental participant, as defined by 10 C.F.R. § 2.1001, that is permitted under an order of the PAPO Board, another Presiding Officer in this proceeding, or the Commission to receive documents in this proceeding subject to this Protective Order and Non-Disclosure Affidavit.

<sup>7</sup> "Internal DOE Orders" means DOE Order 471.1A (Identification and Protection of UCNI) (Approved June 30, 2000), DOE Order 471.3 (Identification and Protection of OUO) (Approved April 9, 2003), and NAVSEAINST 5511.32B (Safeguarding of NNPI) (Approved Dec. 22, 1993), as referenced in DOE Order 471.2A (Information Security Program) (Approved March 27, 1997).

<sup>8</sup> A copy of each executed Non-Disclosure Affidavit will be served on the PAPO Board or another Presiding Officer in this proceeding.

Protected sensitive information shall not be used or disclosed except as provided in this Protective Order and attached Non-Disclosure Affidavit. Access to and control of SGI, UCNI, OUO, and NNPI must conform to the provisions in the following regulations and internal DOE Orders: (1) 10 C.F.R. Part 73 (SGI); (2) 10 C.F.R. Part 1017 (UCNI); (3) DOE Order 471.1A (Identification and Protection of UCNI) (Approved June 30, 2000); (4) DOE Order 471.3 (Identifying and Protecting OUO) (Approved April 9, 2003); and (5) NAVSEAINST 5511.32B (Safeguarding NNPI) (Approved Dec. 22, 1993). Access to protected sensitive information is also subject to the following conditions:

A. Only documents and those portions of documents designated as containing protected sensitive information that are both relevant to and necessary for the conduct of this proceeding shall be shown to counsel, consultants, assistants and others representing a participant pursuant to this Protective Order and attached Non-Disclosure Affidavit.

B. Upon executing and filing the attached Non-Disclosure Affidavit with the PAPO Board, another Presiding Officer in this proceeding, or the Commission, designated counsel, consultants, assistants and others representing a participant, will have access to:

1. Protected sensitive information that contains SGI once the participant demonstrates that counsel, consultants, assistants and others representing the participant have—

i. Established a "need to know"<sup>9</sup> for the information.<sup>10</sup> Except as noted below, as part of a determination of "need to know" for access to SGI, the counsel,

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<sup>9</sup> With regard to this Protective Order and subject to footnote 10, "need to know" means a determination by the participant originating the protected sensitive information that the proposed recipient's access to the protected sensitive information is necessary in the performance of official, contractual, or employment duties with respect to conduct of this proceeding.

<sup>10</sup> In cases where the NRC Staff is in possession of SGI, either solely or in addition to other holders of SGI, the NRC Staff will make a determination of "need to know." In cases when the NRC  
(continued...)

consultants, assistants and others representing the participant must be demonstrated to possess the technical competence necessary to evaluate the portions of the SGI that he or she may be shown.<sup>11</sup> In the case where a designated expert represents a participant and qualifies as having the technical competence necessary to evaluate the protected sensitive information, a participant's counsel and assistants working with the designated expert do not need to independently demonstrate the requisite technical competence necessary to evaluate the portions of the SGI that he or she may be shown; and

**i. Established a “need to know” the information. Legal counsel for a participant has a need to know. Testifying and consulting experts representing a participant have a need to know if they have the technical competence to evaluate the information in question. Whenever legal counsel or experts have a need to know, their assistants (including necessary support staff) working on the information also have a need to know.**

**ii. Been determined to be “trustworthy and reliable” based on a “background check”<sup>12</sup> performed by the NRC, except for NRC staff, counsel, consultants and contractors, DOE personnel, and United States citizens designated by a Governor of a State as**

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Staff is in possession of SGI along with other holders of the SGI, the NRC will consult with the originator of the SGI prior to making its “need to know” determination. In all other cases a determination of “need to know” shall be made by the originator of the SGI.

<sup>11</sup> If qualifications concerning technical competence necessary to evaluate SGI are challenged, the requestor must demonstrate the individual seeking access to the SGI is qualified to evaluate each section of the SGI that is to be reviewed.

<sup>12</sup> To support a background check, an individual seeking access to SGI must provide personal references and sufficient information for the NRC to verify employment history and education. A background check must be sufficient to support the trustworthiness and reliability determination so that the NRC Staff performing the check and the PAPO Board, another Presiding Officer in this proceeding, or the Commission have assurance that granting the individual access to protected sensitive information does not constitute an unreasonable risk to the public health and safety or the common defense and security.

representatives of that State. In this regard "trustworthy and reliable" means positive attributes as an indication of an individual's background and character demonstrating a high-level of confidence that the individual can be properly authorized to have access to protected sensitive information.

2. Protected sensitive information that contains UCNI once the participant demonstrates that counsel, consultants, assistants and others representing the participant have met the requirements for Routine Access in 10 C.F.R. § 1017.16(a) or Special Access in 10 C.F.R § 1017.16(b), as applicable.

3. Protected sensitive information that contains OUO once the participant demonstrates that counsel, consultants, assistants and others representing the participant have a "need to know" this information to perform their official, contractual, or employment duties with respect to this proceeding.

4. Protected sensitive information that contains unclassified NNPI once the participant demonstrates that counsel, consultants, assistants, and others representing the participant have a "need to know" this information to perform their official, contractual, or employment duties with respect to this proceeding. Further, access to NNPI shall only be granted to a United States citizen.<sup>13</sup>

**5. There is a presumption of a "need to know" all protected sensitive information included in or specifically referenced and relied upon in the license application, except that after contentions are admitted this presumption is limited to information relevant to a particular party's admitted contentions.**

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<sup>13</sup> For purposes of NNPI, a "United States citizen" is any United States citizen or United States national provided that individual does not represent a foreign government, foreign private interest, or foreign national on any matter in this proceeding. The term "United States citizen" also excludes immigrant aliens.



C. Qualifications to review and evaluate protected sensitive information pursuant to this Protective Order, including “need to know,” may be stipulated by written agreement among the relevant participants and will be presented to the PAPO Board, another Presiding Officer in this proceeding, or the Commission.

D. The PAPO Board, another Presiding Officer in this proceeding, or the Commission shall resolve any disputes arising under this Protective Order. Prior to presenting any such dispute to the PAPO Board, another Presiding Officer in this proceeding, or the Commission, the parties to the dispute shall consult and use their best efforts to resolve it.

E. Participants, and counsel, consultants, assistants and others representing a participant, who receive any protected sensitive information (including transcripts of in camera hearings, filed testimony, or any other document that reveals protected sensitive information) shall maintain its confidentiality as required by this Protective Order and the attached Non-Disclosure Affidavit (the terms of which are hereby incorporated in this Protective Order). Any copies of documents, notes, or drafts that contain protected sensitive information are treated as the same category of protected sensitive information from which they are derived and are subject to the terms of this Protective Order and attached Non-Disclosure Affidavit. Such notes and copies will not be included in ADAMS or the LSN<sup>14</sup> for this proceeding.

F. Participants, and counsel, consultants, assistants and others representing a participant, who receive any protected sensitive information shall use it solely for the purpose of participation in this proceeding before the PAPO Board, another Presiding Officer in matters directly pertaining to this proceeding, or in any further Commission or judicial proceedings in this case.

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<sup>14</sup> Pursuant to 10 C.F.R. § 2.1003(a)(4), an electronic bibliographic header may be required.

G. Participants, and counsel, consultants, assistants and others representing a participant, shall keep a record of all documents containing protected sensitive information in their possession and shall account for and deliver that information for disposal or safekeeping, as may be determined to be appropriate by the PAPO Board, another Presiding Officer in this proceeding, or the Commission. Each participant in this proceeding shall file with the PAPO Board, other Presiding Officer in this proceeding, or Commission, along with copies to the originators of the protected sensitive information in the proceeding, a semi-annual accounting of all such protected sensitive information in the possession of such participant, consultants, assistants and others representing a participant in this proceeding.

H. Participants, and counsel, consultants, assistants and others representing a participant, may make copies of and take notes on protected sensitive information<sup>15</sup> consistent with need and without permission of the originator. There shall be a limit of two transcripts per participant for any proceeding conducted on the record in which protected sensitive information is disclosed or discussed. Participants, and counsel, consultants, assistants and others representing a participant, shall not reproduce or photocopy these transcripts without the express prior approval of the PAPO Board, another Presiding Officer in this proceeding, or the Commission.

I. All pleadings and correspondence (including testimony) in this proceeding that contain protected sensitive information shall be filed in accordance with the procedures set forth in the Non-Disclosure Affidavit.

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<sup>15</sup> "Notes on protected sensitive information" means memoranda, handwritten notes, or any other form of information (including electronic form) that copies or discloses protected sensitive information.

J. Each person who receives protected sensitive information in this proceeding shall promptly confirm, in writing delivered to the participants in this proceeding who provided such protected sensitive information, that he or she has received that information. Verification of receipt shall be maintained by the participant to whom verification was delivered.

K. Participants, and counsel, consultants, assistants and others representing a participant, shall take all reasonable precautions necessary to ensure that protected sensitive information is not distributed to unauthorized persons. Participants subject to this Protective Order shall also appoint a designated representative who is responsible for ensuring that persons under their supervision or control comply with this Protective Order. No individual shall be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to protected materials pursuant to this Protective Order unless all requirements of this Protective Order for such access have been met. Even if no longer participating in this proceeding, every person who has executed a Non-Disclosure Affidavit shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Affidavit.

L. Public release of information designated as protected sensitive information, either before or after such designation, does not relieve anyone from complying with this Protective Order or Non-Disclosure Affidavit, provided that public release may be grounds for requesting relief under paragraph O. Information formerly designated as protected sensitive information that is authorized to be disclosed and is disclosed in the public record of this proceeding is no longer subject to this Protective Order or attached Non-Disclosure Affidavit.

M. Protected sensitive information shall remain available to participants until the later of the date that an Order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding relating to the protected sensitive information

is concluded and no longer subject to judicial review. The participants shall, within fifteen (15) days of the later date described above, return the protected sensitive information to the producing participant, or shall destroy the information by methods that ensure complete destruction of the protected sensitive information in accordance with applicable regulations and internal DOE Orders, and shall prevent its reconstruction. Within the 15-day period, each participant shall also submit to the producing participant an affidavit stating that, to the best of its knowledge, all protected sensitive information, copies made of such protected sensitive information, and all notes of protected sensitive information have been returned or have been destroyed by methods that assure complete destruction of the protected sensitive information in accordance with applicable regulations and internal DOE Orders, and shall prevent its reconstruction.

N. Participants, and counsel, consultants, assistants and others representing a participant, who have reason to suspect that protected sensitive information (1) may have been lost or misplaced, or (2) has otherwise become available to unauthorized persons during the pendency of this proceeding shall promptly notify the originator of the protected sensitive information as well as the PAPO Board, another Presiding Officer in this proceeding, or the Commission of those suspicions and the reasons for them.

O. Nothing in this Protective Order shall preclude:

1. Any party from objecting to the use of protected sensitive information on any legal grounds;
2. Any party from requesting the PAPO Board, another Presiding Officer in this proceeding, the Commission or any other body having appropriate authority to find that this Protective Order should not apply to any or all materials previously designated as protected sensitive information;

3. Any party from seeking public disclosure of information designated as protected sensitive information in accordance with applicable regulatory procedures;

4. The PAPO Board, another Presiding Officer in this proceeding, or the Commission from finding in the course of this proceeding that all or part of previously-designated protected sensitive information need not be protected. If the PAPO Board, another appropriate Presiding Officer in this proceeding, or the Commission makes such a finding, the protected sensitive information shall nevertheless be subject to this Protective Order for ten (10) days from the date of issuance of the decision. If a participant seeks continued protection and requests that the issue be certified to the Commission or files an interlocutory appeal, this Protective Order shall apply until the issue has been resolved by the Commission or interlocutory appeal.

P. Any violation of the terms of this Protective Order or a Non-Disclosure Affidavit executed in furtherance of this Protective Order may result in the imposition of sanctions as the PAPO Board, another Presiding Officer in this proceeding, or the Commission may deem appropriate, including but not limited to referral of the violation to appropriate enforcement or disciplinary authorities and termination of access to protected sensitive information. Further, breach of this Protective Order and any unauthorized disclosure of protected sensitive information in this proceeding or otherwise may be grounds for the imposition of civil and/or criminal penalties as set forth in 10 U.S.C. § 130, 42 U.S.C. §§ 2168, 2273, and 2282 (§§ 148, 223, 234 of the AEA), and 10 C.F.R. § 2.709(f) [formerly § 2.744(e)], 10 C.F.R. § 1017.18, and 15 C.F.R. Part 764, as applicable.

Q. The PAPO Board, another Presiding Officer in this proceeding, or the Commission may alter or amend this Protective Order as circumstances warrant at any time

during the course of this proceeding. The participants shall be afforded notice and an opportunity to be heard before any such alteration or amendment comes into effect.

It is so ORDERED.

The Pre-License Application  
Presiding Officer Board

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Rockville, Maryland  
[INSERT DATE]

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of \_\_\_\_\_ )  
\_\_\_\_\_) )  
U.S. DEPARTMENT OF ENERGY )  
\_\_\_\_\_) )  
(High-Level Waste Repository) )

NON-DISCLOSURE AFFIDAVIT

I, \_\_\_\_\_, being duly sworn, under penalty of perjury do hereby state:

1. As used in this Non-Disclosure Affidavit,

(a) "Protected sensitive information" means any: (i) Safeguards Information (SGI) as defined in 42 U.S.C. § 2167 (§ 147 of the AEA) and subject to the requirements of 10 C.F.R. Part 73 or Commission Order; (ii) Unclassified Controlled Nuclear Information (UCNI) as defined in 42 U.S.C. § 2168 (§ 148 of the AEA) and subject to the requirements of 10 C.F.R. Part 1017 or DOE Order; (iii) any Official Use Only (OUO) information as defined by and subject to the requirements of the Protected Sensitive Information Protective Order ("Protective Order"); and (iv) any unclassified Naval Nuclear Propulsion Information (NNPI) as defined by and subject to the requirements of the Protective Order.

(b) An "authorized person" is a participant, and counsel, consultants, assistants and others representing a participant, who has been qualified in accordance with the requirements of the accompanying Protective Order and has executed a copy of this Non-Disclosure Affidavit, which Affidavit has been transmitted to the PAPO Board, another Presiding Officer in this proceeding, or the Commission.

(c) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, electronic mail, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs. Document also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the (INSERT DATE) accompanying Protective Order and will comply in all respects with its terms and conditions regarding the protected sensitive information produced in connection therewith. I will treat protected sensitive information in accordance with the terms of this Affidavit and the applicable regulatory requirements and internal DOE Orders as set forth herein.

3. I will not disclose protected sensitive information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will at all times keep documents for which I am responsible that contain protected sensitive information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information) under the control of an authorized person, and will not disclose these documents to anyone else.

4. I will not reproduce or copy any protected sensitive information by any means except to the minimum extent necessary and in accordance with the accompanying Protective Order. I understand that I may take notes concerning such protected sensitive information, subject, however, to the terms of this Affidavit and the accompanying Protective Order. So long



as I possess protected sensitive information, I will continue to take these precautions until further Order of the PAPO Board, another Presiding Officer in this proceeding, or the Commission. I will destroy protected sensitive information only by methods that ensure complete destruction of the protected sensitive information in accordance with applicable regulations and internal DOE Orders, and shall prevent its reconstruction.

5. I will hold in confidence any data, notes, or copies of protected sensitive information and all other papers that contain any protected sensitive information. Further, the following procedures shall apply to my use of protected sensitive information:

(a) My use of the protected sensitive information will be made only (i) at a facility provided for use by designated participant or counsel, (ii) in a designated office of the participant, or (iii) in the NRC headquarters in Rockville, MD. Any such facility is to be located in a controlled access building that is either attended 24 hours a day or locked while unattended.

(b) When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep all documents containing protected sensitive information (including, without limitation, any notes that I may take) in a locked security storage container as defined in 10 C.F.R. § 73.2 that is in a location identified in paragraph 5(a) above. Access to the security storage container will be positively controlled by use of keys or other comparable means. Keys and knowledge of lock combinations safeguarding protected sensitive information shall be limited to authorized persons.

(c) Any administrative support work performed at my request or under my supervision in this proceeding or further proceedings will be performed only at the above location(s) by personnel who have executed a Non-Disclosure Affidavit, which shall be filed

promptly with the PAPO Board, another Presiding Officer in this proceeding, or the Commission upon execution.

(d) Protected sensitive information shall not be discussed by telephone or communicated by email or facsimile transmission unless the protected sensitive information is transmitted through the use of an encryption system that the National Institute of Standards and Technology has validated as conforming either to Federal Information Processing Standard 140-1 or to Federal Information Processing Standard 140-2, or as otherwise acceptable to the NRC.

(e) If protected sensitive information is processed on or with automated data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored protected sensitive information. If use of an entry code is not feasible, protected sensitive information may be processed on, but shall not be stored in, such equipment. If any protected sensitive information is backed up or stored on a computer hard drive or other device, that drive or device shall be capable of being removed and shall be stored in the security storage container referred to in paragraph 5(b) above when not in use. Additionally, any such word processing equipment, data processing equipment, or computer that is used to process or store SGI shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network (LAN) or Wide Area Network (WAN) or other data-sharing system, in accordance with 10 C.F.R. § 73.21(h).

(f) Each document that has been determined to contain SGI shall be marked "Safeguards Information" in a conspicuous manner as set forth in 10 C.F.R. § 73.21(e).

(g) Each document that has been determined to contain UCNI shall be marked "Unclassified Controlled Nuclear Information" as set forth in 10 C.F.R. § 1017.15.

(h) Each document that has been determined to contain OUO shall be marked “Official Use Only” consistent with DOE Order 471.3 (Approved April 9, 2003).

(i) Each document that has been determined to contain NNPI shall be marked “NOFORN: THIS DOCUMENT IS SUBJECT TO SPECIAL EXPORT CONTROLS AND EACH TRANSMITTAL TO FOREIGN GOVERNMENTS OR FOREIGN NATIONALS MAY BE MADE ONLY WITH PRIOR APPROVAL OF THE NAVAL SEA SYSTEMS COMMAND” consistent with NAVSEAINST 5511.32B (Safeguarding NNPI) (Approved Dec. 22, 1993).

6. I will ensure that all pleadings and correspondence (including testimony) in this proceeding that contain protected sensitive information shall be:

(a) Appropriately marked designating the type of protected sensitive information contained in the document;

(b) Submitted only on a 3.5-inch diskette or CD-ROM produced, marked, and transmitted in accordance with the requirements of the accompanying Protective Order and Non-Disclosure Affidavit;

(c) Segregated and served only—

(i) On the NRC Office of the Secretary (the NRC Office of the Secretary receives the original), lead counsel,<sup>16</sup> and the individual members of the PAPO Board, another Presiding Officer in this proceeding, or the Commission;

(ii) By (1) United States first class, registered, express, or certified mail, (2) internal NRC mail, (3) messenger-courier or overnight delivery service (e.g., Federal

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<sup>16</sup> Each participant will designate a lead counsel who is authorized to receive protected sensitive information and has executed a Non-Disclosure Affidavit.

Express), or (4) personal delivery by an individual who otherwise is authorized access pursuant to applicable regulations or agency directives, or an Order issued by the PAPO Board, another Presiding Officer in this proceeding, or the Commission;

(iii) In two sealed envelopes or wrappers, including (1) an outer mailing envelope, and (2) a heavy, opaque inner envelope bearing the name and address of the addressee and the statement "SAFEGUARDS INFORMATION," "UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION", or "OFFICIAL USE ONLY," as appropriate, followed by the statement "TO BE OPENED BY ADDRESSEE ONLY." Unclassified NNPI shall be marked "NOFORN – SPECIAL HANDLING REQUIRED – NOT RELEASABLE TO FOREIGN NATIONALS." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked. The outer envelope or wrapper will contain the intended recipient's name and address, and will bear no marking or indication that the document within contains protected sensitive information; and

(d) Accompanied by an attached cover letter or memorandum, which will also be filed on the Electronic Hearing docket via the NRC's Electronic Information Exchange, that briefly describes the contents of the pleading or correspondence without reference to any protected sensitive information.

7. I shall use protected sensitive information only for the purpose of participating in any proceeding in this case dealing with the licensing of a high level waste geologic repository at Yucca Mountain, Nevada, and for no other purpose.

8. I shall keep a record of all documents containing protected sensitive information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. On a semi-annual basis, and at the conclusion of this proceeding, I shall account to

the PAPO Board, another Presiding Officer in this proceeding, or the Commission for all the documents or other materials containing protected sensitive information in my possession and shall deliver them as provided herein. When I have finished using the protected sensitive information they contain, but in no event later than the conclusion of this proceeding (including any related Commission or judicial proceedings), I shall deliver those documents and materials for disposal or safekeeping, as may be determined to be appropriate by the PAPO Board, another Presiding Officer in this proceeding, or the Commission.

9. I execute this Non-Disclosure Affidavit with the following understandings:

(a) I do not waive any objections that I may have or raise at a subsequent time in this proceeding concerning an expert's qualifications to testify concerning issues relevant to the licensing of a high level waste geologic repository at Yucca Mountain, Nevada; and

(b) I will not publicly discuss or disclose any protected sensitive information that I receive by virtue of this proceeding and will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected sensitive information, or my knowledge thereof, gained through the hearing process.

10. I agree to comply with the access and control provisions for SGI, UCNI, OOU, and NNPI in the following regulations and internal DOE Orders:

(a) 10 C.F.R. Part 73, Safeguards Information.

(b) 10 C.F.R. Part 1017, Unclassified Controlled Nuclear Information.

(c) DOE Order 471.1A, Identification and Protection of Unclassified Controlled Nuclear Information (Approved June 30, 2000).

(d) DOE Order 471.3, Identifying and Protecting Official Use Only Information (Approved April 9, 2003).

(e) NAVSEAINST 5511.32B, Safeguarding of Naval Nuclear Propulsion Information (Approved Dec. 22, 1993). Compliance with the requirements of the Non-Disclosure Affidavit and accompanying Protective Order constitutes compliance with NAVSEAINST 5511.32B (Safeguarding NNPI) (Approved Dec. 22, 1993).

11. I acknowledge that any violation of the terms of this Non-Disclosure Affidavit or the accompanying Protective Order, which incorporates the terms of this Affidavit, may result in the imposition of such sanctions as the PAPO Board, another Presiding Officer in this proceeding, or the Commission may deem to be appropriate, including but not limited to referral of the violation to appropriate enforcement or disciplinary authorities, or termination of my access to protected sensitive information. I further acknowledge that any breach of the accompanying Protective Order, this Non-Disclosure Affidavit, or unauthorized disclosure of protected sensitive information may be grounds for the imposition of civil and/or criminal penalties as set forth in 10 U.S.C. § 130, 42 U.S.C. §§ 2168, 2273, and 2282 (§§ 148, 223, 234 of the AEA), and 10 C.F.R. § 2.709(f) [formerly § 2.744(e)], 10 C.F.R. § 1017.18 and 15 C.F.R. Part 764, as applicable.

WHEREFORE, I do solemnly agree to treat such protected sensitive information as may be disclosed to me in this proceeding in accordance with the terms of the accompanying Protective Order and this Non-Disclosure Affidavit.

\_\_\_\_\_  
[Printed Name]

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Signature: \_\_\_\_\_

Subscribed to and sworn before me  
this \_\_\_\_ day of \_\_\_\_\_,200\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_/200\_

July 8, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION 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)	)	

DEPARTMENT OF ENERGY'S SUBMISSION OF A PROPOSED  
JOINT PROTECTIVE ORDER FOR PROTECTED SENSITIVE INFORMATION  
CERTIFICATE OF SERVICE

I certify that copies of the foregoing DEPARTMENT OF ENERGY'S SUBMISSION OF A PROPOSED JOINT PROTECTIVE ORDER FOR PROTECTED SENSITIVE INFORMATION has been served upon the following persons by electronic mail and/or Electronic Information Exchange as denoted by an asterisk (\*).

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