

March 30, 2006

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)	)	NRC-05

MOTION TO RECLAIM PRIVILEGED DOCUMENTS

INTRODUCTION

The NRC Staff moves to reclaim 15 documents inadvertently published on the Licensing Support Network (LSN) that are subject to the secondary, privacy privilege. See Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution), July 8, 2005, at 4. The grounds for this motion are set forth below.

DISCUSSION

Part II.H of the Second Case Management Order states, "Upon timely motion, a potential party that inadvertently produces a privileged document may be permitted, in appropriate circumstances and upon a showing of good faith inadvertence, to re-claim the document from other potential parties."<sup>1</sup> Second Case Management Order, at 8. NRC Staff counsel was advised by Staff information technology personnel on March 29, 2006, that 15 documents, containing personal privacy information were published on the LSN. These documents were discovered as part of a review of the Agencywide Documents Access and Management System for personal information that may have been inadvertently made public. NRC Staff counsel has

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<sup>1</sup> In its order of February 16, 2006, the Pre-License Application Presiding Officer (PAPO) stated that the post-certification procedure for re-claiming a privileged document that is inadvertently produced is set forth in Part II.H of the Second Case Management Order. PAPO Board Memorandum and Order (Deletions of Documents From the LSN), Feb. 16, 2006, note 9.

reviewed the documents to confirm that they contain personal identifying information that is subject to a claim of privilege. See Second Case Management Order, Appendix D-1.

The 15 documents were among the approximately 25,000 documents published on the LSN coincident with the Staff's certification of its collection in July 2004. The privacy-related information was not identified during the processing of documents prior to the Staff's certification. This is because the documents were already public and presumed not to contain privacy information. Accordingly, the Staff contends that there was good faith inadvertence in the publication of these documents on the LSN.

In order to expeditiously remove the documents from the LSN, the NRC Staff proposes to provide a list of accession numbers of the 15 documents to the LSN Administrator (LSNA), who, upon the PAPO Board's approval, will remove the documents from the LSN. In accordance with the Second Case Management Order, the Staff will provide redacted versions of the 15 documents to the LSNA along with bibliographic headers for the redacted and unredacted versions. See Second Case Management Order, at 15. The bibliographic headers will be cross-referenced. See *id.* The Staff will provide the redacted documents and bibliographic headers within five business days to the LSNA.

#### CONCLUSION

In light of the foregoing, NRC Staff counsel submits that good cause exists to grant the NRC Staff's request to reclaim the 15 documents on the LSN that are subject to privilege. Therefore, the Staff's motion to remove the 15 documents from the LSN and to substitute redacted versions with the appropriate bibliographic headers should be granted. Pursuant to 10 C.F.R. § 2.323(b), NRC Staff counsel has contacted counsel for the State of Nevada,

Department of Energy and Nuclear Energy Institute, and the LSN Administrator for Mineral County, Nevada who do not object to this motion.

Respectfully submitted,

***/RA/***

Harry E. Wedewer  
Counsel for the NRC Staff

Dated at Rockville, Maryland  
this 30th day of March, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "MOTION TO RECLAIM PRIVILEGED DOCUMENTS" in the above captioned proceeding have been served on the following persons this 30th day of March, 2006 by Electronic Information Exchange.

Thomas S. Moore, Chair  
Administrative Judge  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [papo@nrc.gov](mailto:papo@nrc.gov)

Alex S. Karlin  
Administrative Judge  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [papo@nrc.gov](mailto:papo@nrc.gov)

Alan S. Rosenthal  
Administrative Judge  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [papo@nrc.gov](mailto:papo@nrc.gov)  
[rsnthl@comcast.net](mailto:rsnthl@comcast.net)

G. Paul Bollwerk, III  
Administrative Judge  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [papo@nrc.gov](mailto:papo@nrc.gov)  
[gpb@nrc.gov](mailto:gpb@nrc.gov)

Office of the Secretary  
ATTN: Rulemakings and Adjudication Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555  
E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov)

Donald P. Irwin, Esq.  
Kelly L. Faglioni, Esq.  
Edward P. Noonan, Esq.  
W. Jeffery Edwards, Esq.  
Michael R. Shebelskie, Esq.  
Melissa Grier  
Stephanie Meharg  
Audrey B. Rusteau  
Belinda A. Wright  
Christopher A. Updike  
Hunton & Williams, LLP  
951 East Byrd Street  
Richmond, VA 23219  
E-mail: [dirwin@hunton.com](mailto:dirwin@hunton.com)  
[kfaglioni@hunton.com](mailto:kfaglioni@hunton.com)  
[enoonan@hunton.com](mailto:enoonan@hunton.com)  
[arusteau@hunton.com](mailto:arusteau@hunton.com)  
[jedwards@hunton.com](mailto:jedwards@hunton.com)  
[mgrier@hunton.com](mailto:mgrier@hunton.com)  
[smeharg@hunton.com](mailto:smeharg@hunton.com)  
[bwright@hunton.com](mailto:bwright@hunton.com)  
[cupdike@hunton.com](mailto:cupdike@hunton.com)  
[mshebelskie@hunton.com](mailto:mshebelskie@hunton.com)

Michael A. Bauser, Esq.  
Associate General Counsel  
Ellen C. Ginsberg, Esq.  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, D.C. 20006-3708  
E-mail: [mab@nei.org](mailto:mab@nei.org)  
[ecg@nei.org](mailto:ecg@nei.org)

Thomas R. Combs  
U.S. Nuclear Regulatory Commission  
Office of Congressional Affairs  
Mail Stop: O-17 A3  
Washington, D.C. 20555  
E-mail: [trc@nrc.gov](mailto:trc@nrc.gov)

Jason Pitts  
White Pine County  
City of Caliente  
Lincoln County  
E-mail: [idt@idtservices.com](mailto:idt@idtservices.com)

Atomic Safety and Licensing Board Panel  
(ASLBP) HLW Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail:  
[ASLBP\\_HLW\\_Adjudication@nrc.gov](mailto:ASLBP_HLW_Adjudication@nrc.gov)

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

Joseph R. Egan, Esq.  
Martin G. Malsch, Esq.  
Charles J. Fitzpatrick, Esq.  
Robert J. Cynkar, Esq.  
Jack Kewley  
Susan Montesi  
Nakita Toliver  
Egan, Fitzpatrick, Malsch & Cynkar, PLLC  
8300 Boone Blvd., Suite 340  
Vienna, VA 22182  
E-mail: [eganpc@aol.com](mailto:eganpc@aol.com)  
[mmalsch@nuclearlawyer.com](mailto:mmalsch@nuclearlawyer.com)  
[rcynkar@nuclearlawyer.com](mailto:rcynkar@nuclearlawyer.com)  
[cfitzpatrick@nuclearlawyer.com](mailto:cfitzpatrick@nuclearlawyer.com)  
[jkewley@nuclearlawyer.com](mailto:jkewley@nuclearlawyer.com)  
[smontesi@nuclearlawyer.com](mailto:smontesi@nuclearlawyer.com)  
[ntoliver@nuclearlawyer.com](mailto:ntoliver@nuclearlawyer.com)

Bethany L. Engel  
James M. Cutchin  
Jonathan Rund  
Susan Stevenson-Popp  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [papo@nrc.gov](mailto:papo@nrc.gov)

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

Martha S. Crosland, Esq.  
Angela Kordyak, Esq.  
U.S. Department of Energy  
Office of the General Counsel  
1000 Independence Ave., SW  
Washington, D.C. 20585  
E-mail: [martha.crosland@hq.doe.gov](mailto:martha.crosland@hq.doe.gov)  
[angela.kordyak@hq.doe.gov](mailto:angela.kordyak@hq.doe.gov)

William Greene  
Public Information Officer  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, D.C. 20585  
E-mail: [william.greene@hq.doe.gov](mailto:william.greene@hq.doe.gov)

Anthony C. Eitreim, Esq.  
Chief Counsel  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [papo@nrc.gov](mailto:papo@nrc.gov)  
[ace1@nrc.gov](mailto:ace1@nrc.gov)

Daniel J. Graser  
Licensing and Support Network  
Administrator  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [djq2@nrc.gov](mailto:djq2@nrc.gov)

Robert Loux  
Steve Frishman, Tech. Policy Coordinator  
Nuclear Waste Project Office  
1761 East College Parkway, Suite 118  
Carson City, NV 89706  
E-mail: [bloux@nuc.state.nv.us](mailto:bloux@nuc.state.nv.us)  
[steve.frishman@gmail.com](mailto:steve.frishman@gmail.com)

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

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

George W. Hellstrom, Esq.  
U.S. Department of Energy  
Office of the General Counsel  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321  
E-mail: [george.hellstrom@ymp.gov](mailto:george.hellstrom@ymp.gov)

Deborah Teske  
Lander County Nuclear Waste Oversight  
Program  
315 Humboldt Street  
Battle Mountain, NV 89820  
E-mail: [dteske@landercounty.org](mailto:dteske@landercounty.org)

Patricia Larimore  
Talisman International, LLC  
1000 Potomac Street, NW, Suite 300  
Washington, D.C. 20007  
E-mail: [plarimore@talisman-intl.com](mailto:plarimore@talisman-intl.com)

Loreen Pitchford Consulting  
LSN Administrator for Lander, Mineral and  
Churchill Counties  
P.O. Box 33908  
Reno, NV 89533  
E-mail: [lpitchford@comcast.net](mailto:lpitchford@comcast.net)

Chris Howard  
GIS/LAN Administrator  
Inyo County  
163 May Street  
Bishop, CA 93514  
E-mail: [choward@inyowater.org](mailto:choward@inyowater.org)

Senator Harry Reid  
Attn: Sandra Schubert  
Room 528 Hart Senate Office Building  
United States Senate  
Washington, D.C. 20510-2803  
E-mail: [Sandra\\_Schubert@reid.senate.gov](mailto:Sandra_Schubert@reid.senate.gov)

Jeffrey Kriner  
Yucca Mountain Project, Licensing Group  
DOE/BSC  
E-mail: [jeffrey\\_kriner@ymp.gov](mailto:jeffrey_kriner@ymp.gov)

Margaret Plaster  
City of Las Vegas  
400 Stewart Avenue  
Las Vegas, NV 89101  
E-mail: [mplaster@LasVegasNevada.gov](mailto:mplaster@LasVegasNevada.gov)

**/RA/**

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Harry E. Wedewer  
Counsel for the NRC Staff