

November 6, 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-06

NRC STAFF'S SECOND MOTION TO RECLAIM PRIVILEGED DOCUMENTS

INTRODUCTION

The NRC Staff moves to reclaim documents inadvertently published on the Licensing Support Network (LSN) that are subject to a secondary privilege (*i.e.*, privacy and proprietary information) based on a showing of good faith inadvertence. See Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution), July 8, 2005 (unpublished), at 4, 8. 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."¹ Second Case Management Order, at 8. NRC Staff counsel was recently advised by technical staff in the Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, that four (4) documents, containing personal privacy information and/or proprietary information, were discovered on the LSN during ongoing agency

¹ 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. Memorandum and Order (Deletions of Documents From the LSN), Feb. 16, 2006 (unpublished), at 6 n.9.

reviews of the Agencywide Documents Access and Management System for sensitive information that may have been inadvertently made public. These documents were previously public in ADAMS, but are now nonpublic. The undersigned Staff counsel has reviewed the documents to confirm that they contain personal identifying information or proprietary information that is subject to a claim of privilege. See Second Case Management Order, Appendix D-1 and Appendix E.

Three of the 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 fourth document was added to the LSN in 2006. The privacy-related information and proprietary information was not identified during the processing of documents for LSN because it was presumed that these previously public documents did not contain sensitive 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 will provide a list of accession numbers for the four 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 has prepared and will provide redacted versions of the four documents to the LSNA along with bibliographic headers for the redacted and unredacted versions. See Second Case Management Order, at 15. The headers for the redacted documents contain cross-references to the unredacted versions. See *id.* The redacted documents and new bibliographic headers will be provided to the LSNA upon the PAPO Board's approval of this request.

CONCLUSION

In light of the foregoing, NRC Staff counsel submits that good cause exists to grant the NRC Staff's request to reclaim the above-mentioned privileged documents on the LSN.

Therefore, the Staff's motion to remove these 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), the undersigned Staff counsel contacted (1) counsel for the State of Nevada, the Department of Energy, and the Nuclear Energy Institute, (2) counsel for Lincoln County, Eureka County and Lander County, Nevada, and (3) the LSN Administrator for Mineral County and Churchill County, Nevada, and was informed that they do not object to this motion. Attempts to reach the representative of record for White Pine County, Nevada, were not successful.

Respectfully submitted,

/RA/

Mitzi A. Young
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 6th day of November, 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-06
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S SECOND MOTION TO RECLAIM PRIVILEGED DOCUMENTS" in the above captioned proceeding have been served on the following persons this 6th day of November, 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

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

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
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
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

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
kfaglioni@hunton.com
enoonan@hunton.com
arusteau@hunton.com
jedwards@hunton.com
mgrier@hunton.com
smeharg@hunton.com
bwright@hunton.com
cupdike@hunton.com
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
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

Jason Pitts
White Pine County
City of Caliente
Lincoln County
E-mail: 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

Michele Boyd
Legislative Representative
Critical Mass Energy and Environment
Public Citizen
215 Pennsylvania Ave., SE
Washington, D.C. 20003
E-mail: 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
mmalsch@nuclearlawyer.com
rcynkar@nuclearlawyer.com
cfitzpatrick@nuclearlawyer.com
jkewley@nuclearlawyer.com
smontesi@nuclearlawyer.com
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

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
atb1@nrc.gov
rlj@nrc.gov
elj@nrc.gov
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
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

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
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

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
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

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

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

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

Patricia Larimore
Talisman International, LLC
1000 Potomac Street, NW, Suite 300
Washington, D.C. 20007
E-mail: 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

Chris Howard
GIS/LAN Administrator
Inyo County
163 May Street
Bishop, CA 93514
E-mail: 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

Barry S. Neuman, Esq.
Carter Ledyard & Milburn, LLP
Counsel for Lincoln County
1401 Eye Street, N.W.
Washington, D.C. 20005
E-mail: neuman@clm.com

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

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

Diane Curran, Esq.
Eureka County and Lander County, Nevada
Harmon, Curran, Spielberg & Eisenberg,
LLP
1726 M. Street N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

/RA/

Mitzi A. Young
Counsel for the NRC Staff