

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:  
Thomas S. Moore, Chairman  
G. Paul Bollwerk, III  
Paul S. Ryerson**

_____ )	Docket No. PAPO-001
In the Matter of )	
U.S. DEPARTMENT OF ENERGY )	ASLBP No. 08-861-01-PAPO-BD01
)	
(High-Level Waste Repository: )	March 24, 2008
<u>Pre-Application Matters, Advisory PAPO Board) _____</u>	

**U.S. DEPARTMENT OF ENERGY'S  
RESPONSE TO ADVISORY PAPO  
BOARD NOTICE AND MEMORANDUM  
(REQUESTING INFORMATION FROM POTENTIAL PARTIES)**

The U.S. Department of Energy (DOE or Department) hereby submits the following Response to the Advisory Pre-License Application Presiding Officer Board's (Advisory PAPO Board or Board) March 6, 2008 "Notice and Memorandum (Requesting Information from Potential Parties)" (Notice and Memorandum). The Advisory PAPO Board has requested that DOE provide "a best good faith estimate of the number of days it realistically will need to file reasoned answers to each range of contentions" listed by the Board, in order to assist the Licensing Boards in making their contention admissibility determinations. Notice and Memorandum at 4.

To meet the schedule requirements set forth in NWSA Section 114(d), DOE is committed to taking the necessary steps to adhere as closely as possible to the milestones set forth in 10 C.F.R. Part 2, Appendix D. If the Advisory PAPO Board recommends, and the Commission

ultimately establishes, timely and effective case management procedures relating to the review and disposition of Petitions to Intervene, then DOE believes that it can submit responsive and reasoned Answers to each range of contentions specified in the Board's Notice and Memorandum (up to as many as 3,000 and perhaps more contentions) within the 25-day period set forth for Answers in 10 C.F.R. Part 2, Appendix D.<sup>1</sup> DOE believes other potential parties also should be able to meet the time periods set forth in 10 C.F.R. Part 2, Appendix D. However, if a potential party requests additional time and the Advisory Board decides to recommend that such a request be granted, we encourage the Advisory Board to recommend no more than the additional 15 days which may be authorized by a Licensing Board without approval from the Commission. *See* 10 C.F.R. § 2.1026(b)(1). Should an extended schedule ultimately be established for Replies to Answers, DOE reserves the right to seek a comparable extension for the filing of its Answers.

The Advisory PAPO Board has stated that one approach to facilitate the efficient disposition of contentions would be “to label contentions in a way that models the Table of Contents (TOC) of the DOE License Application to show the specific portion of the application being challenged, which petitioners are required to demonstrate under 10 C.F.R. § 2.309(f)(c)(vi) when contentions are filed.” Notice and Memorandum at 6. The Board therefore has asked DOE to provide the current version of the TOC of the draft License Application (LA) so that the Board can, among other things, understand the “level of granularity” of the TOC and develop

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<sup>1</sup> Such procedures should include, among other things, issuance of a Commission Case Management Order sufficiently before the Notice of Hearing is issued to ensure that time is available for all of the potential parties to comply before they are required to submit Petitions, Answers and Replies on the rigorous schedule set forth in 10 C.F.R. Part 2, Appendix D. DOE's ability to respond to the anticipated large number of contentions would be aided if the Case Management Order included, among other things: a standard format for contentions; clear references to the specific portions of the License Application being challenged; provision of actual copies of references upon which the Petitioners rely with the Petitions; and certain pre-Petition disclosures by the potential parties. DOE is prepared to provide its specific proposals for achieving the initial Appendix D milestones at the Advisory Board's request.

appropriate recommendations on the requisite specificity of proposed contentions. Notice and Memorandum at 5.

To assist the Board in developing its recommendations to the Commission, DOE is providing the following two attached documents:

1. Attachment A is the actual draft TOC for the current draft LA written at the level of detail that DOE intends to submit as a part of the LA. Please note that the sections and subsections are specified down to the “fourth” level of granularity, *e.g.*, see subsections 1.1.2.1, 2.1.1.3, and 5.1.6.1.
2. Attachment B is a complete listing of every section and subsection of the current draft LA down to the lowest tier of specificity or “granularity.” This document provides the Advisory Board and potential parties with the entire organization and structure of the LA. While all of the sections and subsections in Attachment B will appear in the actual LA (except as may be modified between the current draft and final version of the LA), DOE does not intend to provide a TOC at this level of detail in the LA itself.

DOE encourages the Board to recommend to the Commission that the Petitioners’ contentions contain as specific and detailed references to the portions of the LA being challenged as will reasonably facilitate the process of dispositioning the contentions. In particular, we recommend requiring that the titles of the contentions reference the “fourth” level of subsection “granularity,” and that the text of the contentions be required to reference the specific pages of the LA that are being challenged. DOE believes that this level of specificity will provide adequate notice to the Boards and the parties as to the specific portions of the LA being challenged, while not imposing an onerous burden on Petitioners or requiring Petitioners to cite multiple, lower-tiered subsections of the LA.

In conclusion, DOE looks forward to the opportunity to review and comment upon the Advisory PAPO Board's proposal for the contents of a Case Management Order, particularly with respect to the management and disposition of Petitions to Intervene.

Respectfully submitted,

Signed (electronically) by Donald J. Silverman

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Dated in Washington, D.C.  
this 24th of March, 2008