

**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**

		<b>Docket No. PAPO-001</b>
<b>In the Matter of:</b>	)	
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>ASLBP No. 08-861-01-PAPO-D01</b>
<b>High-Level Waste Repository:</b>	)	
	)	
<b>Pre-Application matters, Advisory PAPO</b>	)	<b>April 28, 2008</b>
<b>Board)</b>	)	

**RESPONSE OF LINCOLN COUNTY, NEVADA TO MEMORANDUM OF  
ADVISORY PAPO BOARD DATED APRIL 4, 2008 REQUESTING INPUT  
FROM PARTIES ON FORMAT OF CONTENTIONS**

1. Introduction

Lincoln County, Nevada, by and through undersigned counsel, submits this response to the Memorandum of the Advisory PAPO Board (“Advisory PAPO Board” or “Board”) dated April 4, 2008, requesting input from potential parties concerning the format of contentions.

Lincoln County has been designated an Affected Unit of Local Government by the Department of Energy (“DOE”) with respect to the proposed Yucca Mountain Repository. Alamo, a growing residential/agricultural community in southwestern Lincoln county, lies only 80 miles downwind from the proposed repository site. Lincoln county is concerned with atmospheric exposure pathways for radionuclides originating at the proposed Yucca Mountain repository. In addition, the DOE’s preferred approach

calls for nuclear waste to be shipped from around the country to the City of Caliente, which lies in Lincoln County. Under the DOE's preferred alternative, rail cars hauling containers of radioactive waste would be switched from the Union Pacific mainline in Caliente and then transported from Caliente to Yucca Mountain via the "Caliente Rail Corridor," a proposed new rail line that would traverse more than 100 miles through Lincoln County. Thus, Lincoln County is directly and vitally affected by the proposed Yucca Mountain project. It has participated in the pre-license application proceedings and intends to participate in the licensing proceedings as well.

## 2. Format of Contentions

### General Observations

· The Advisory PAPO Board indicates that it is inclined to require the parties to submit "single issue contentions." Although the Board has not specifically requested comment on this issue, Lincoln County seeks clarification as to the meaning of "single issue contentions." Several examples illustrate the point:

(1) If a contention asserts that an Environmental Impact Statement (EIS) fails adequately to assess and disclose potential alternatives to a proposed action, and then identifies three alternatives that the proponent believes should have been considered, does that constitute one contention or three contentions?

(2) If a contention asserts that an EIS fails adequately to assess and disclose socio-economic impacts, and then discusses impacts to schools; employment; inflation; housing; and crime, does that comprise one contention or five contentions?

(3) If a contention asserts that an EIS fails adequately to assess and disclose impacts to groundwater, and then identifies five separate hydrogeological phenomena and

three separate chemical phenomena that have been inadequately considered with respect to ground water impacts, does that constitute one contention, (groundwater impacts), two contentions (hydrogeological factors and chemical factors), eight contentions (five plus three), or some other number of contentions?

· Lincoln County agrees with the Advisory Board that employing a uniform format for contentions could, in theory, facilitate briefing and decisions concerning the admissibility of potential contentions and help to streamline and expedite the licensing proceedings. However, whether those goals will be advanced or hindered will depend on the specific format adopted. Lincoln County offers the following observations and responses to the Advisory Board's specific issues: The outline used below to provide Lincoln County's comments corresponds to the outline utilized by the Board in its April 4<sup>th</sup> Memorandum to identify issues for comment.

Specific Issues As to Which Comment Has Been Requested

A. As noted, Lincoln County agrees that requiring a uniform format could be useful.

1. However, to be useful and also avoid imposing unduly onerous requirements on the parties, the prescribed format should be structured in as streamlined and organized fashion as possible, so as to avoid requiring the parties to repeat the same information in different portions of the contention.

2. Requiring parties to label and address separately and in order each of the requirements set forth in 10 C.F.R. § 2.309(f)(1)(i)-(vi) would be unduly onerous and counterproductive. Because those categories overlap, requiring each of them to be addressed as a separate "line item" would entail substantial redundancy, thereby placing

unnecessary burdens on the parties drafting the contention and complicating rather than streamlining the process of reviewing and assessing its admissibility.

In addition, Lincoln County is concerned that requiring contentions to be supported by references to the “fourth level of granularity,” as proposed by the Department of Energy<sup>1</sup> would be unduly onerous and potentially prejudicial. Many contentions will relate to matters that are discussed or implicated in many places within an environmental impact statement or license application. To require a party to capture every reference to the issue in an EIS or license application, or to penalize that party in the event that it fails (as all parties inevitably will) to cite to every place in the pertinent document where the issue is implicated, would be unduly onerous and draconian. Lincoln County agrees that contentions should contain references that “will reasonably facilitate the process of dispositioning the contentions,” as the DOE states. However, Lincoln county does not believe it is necessary to require specificity to the fourth level of granularity to achieve that goal.

3. Lincoln County agrees it would be useful to require labeling contentions of omission and identifying the supporting legal authority.

4. Lincoln County believes it would be unnecessary and inappropriate to require the labeling “purely legal” contentions. Most contentions will be fact-based or mixed questions of law and fact, and the line between the two often will not be clear. Whether an issue will be purely “legal” may depend in part on whether or not an opponent of the contention intends to dispute the facts underlying the contention, something that the proponent of the contention will not necessarily know at the time of

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<sup>1</sup> See U.S. Department of Energy’s Response to Advisory PAPO Board Notice and Memorandum (Requesting Information From Potential Parties, March 24, 2008, at 3).

drafting the contention. Thus, requiring a party to choose at the outset whether a contention is purely legal would be unfair and may force the party to place itself in a box that will turn out to be inappropriate. On the other hand, the benefits of requiring such a designation would seem to be minimal.

B. 1. Lincoln County questions whether a categorization scheme based on subject matter could be developed that would be particularly useful. Many issues/categories are cross-cutting, so that to make the categories narrow would be misleading and unduly one-dimensional, whereas to leave the categories very broad (*e.g.*, “NEPA, safety” and the like) would not be sufficiently informative or helpful. NEPA, for example, includes environmental impacts, alternatives, mitigation measures, socio-economic impacts and many other considerations, and it is unlikely that one specialist would handle all issues addressed under NEPA.

2. Requiring that labeling include a reference to the document or documents from which the contention is drawn may be useful. However, if the purpose of this labeling requirement is to facilitate allocation among licensing boards and among counsel with primary responsibility for preparing answers, then it would be sufficient to require such labeling to be at a very general level of granularity -- *e.g.*, to identify the general subject matter at issue.

3. In light of the foregoing comments, Lincoln County believes that the approach reflected in Option 2 of Attachment A to the Board’s April 4<sup>th</sup> Memorandum is generally preferable to Option 1 because it appears to require less specificity in labeling contentions. With respect to Option 1.A., however Lincoln County questions the need to designate an NRC Staff Position Statement on Adoption of an EIS. A contention will

address the issue of whether an EIS should be adopted; to address the position of NRC staff on that issue separately would seem to be unnecessary and duplicative.

C. Lincoln County supports the proposal that contentions employ a uniform system for referencing supporting materials.

1. For non-LSN documentary material or expert analysis, it should be sufficient to cite to an active, publicly accessible internet universal resource locator (URL).

2. For LSN documentary material, it should be sufficient to provide the LSN accession number.

3. Lincoln County believes it is appropriate to require materials supporting a petition for intervention *other than* documents that are on the LSN, ADAMS or a URL site to be submitted electronically with the petition. There is no need to attach documents that are available on the LSN, ADAMS or a URL site, and to require parties to do so would be unduly onerous and wasteful..

4. See response to 3 above.

5. See response to 3 above.

D. Lincoln County supports the State of Nevada's suggested measures to prohibit or deter DOE from filing oppositions to contentions that in reality go to the merits of the dispute rather than the appropriateness of the contention. If the DOE's opposition to a contention is in reality a challenge on the merits, then not only should the contention be allowed but DOE should be precluded from later moving for summary disposition of that contention. Further, as the State proposes, any objection to a factual contention raised by

DOE should be accompanied by an affidavit from an expert stating that the contention is either unintelligible or does not raise a genuine issue.

Respectfully submitted,

[signed electronically by]

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	)	ASLBP No. 08-861-01-PAPO-
(High-Level Waste Repository:	BD01	
Pre-Application Matters, Advisory PAPO	)	
Board)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the Response of Lincoln County, Nevada to Memorandum of Advisory PAPO Board Dated April 4, 2008, in the above captioned proceeding have been served on the following persons this 28th day of April, 2008, by Electronic Information Exchange.

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