

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

**Before Administrative Judges:
Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal**

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)	March 12, 2009

**JOINT RESPONSE TO THE BOARD'S
FEBRUARY 20, 2009 MEMORANDUM AND ORDER**

By an Order dated February 20, 2009, the Pre-License Application Presiding Officer (PAPO) Board directed the U.S. Department of Energy (DOE), the State of Nevada, and Nuclear Regulatory Commission (NRC) Staff to answer certain questions regarding the Revised Case Management Order Governing Classified Information (RCMO). Counsel for these parties have conferred and, as directed by the PAPO Board, DOE submits the following agreed joint responses.

I. PAPO Board's proposed changes. DOE, Nevada and the NRC Staff agree to the following responses to the PAPO Board's proposed changes to the RCMO:

- 1.a. No objection.
- 1.b. No objection.
- 1.c. No objection.

II. Proposed amendments. DOE, Nevada and the NRC Staff agree to the following amendments to the RCMO. Attached hereto is a new version of the RCMO that incorporates the

PAPO Board's proposed edits and these proposed joint amendments.

2.a. New section IV.D. Schedule for New or Amended Contentions. Absent a timely request for an extension, Nevada shall have 50 days from the later of: (a) the issuance of this 6th CMO, or (b) the date Nevada first has notice of the existence of Classified Information that DOE has submitted to the NRC, to file a new or amended contention based on that Classified Information. If DOE denies access to one or more of Nevada's representatives with appropriate security clearances under Section IV.B. of this 6th CMO, then the act of Nevada filing a Motion pursuant to Section IV.C.1 of this 6th CMO will toll the 50-day period with respect to the specific Classified Information to which Nevada has been denied access.

2.b. Addition to section V.2.a. DOE shall provide at its expense, space and basic office equipment and supplies (*e.g.*, computer to type contentions; printer; electronic storage media (*e.g.*, storage disks), envelopes to seal, store, and serve information; and space in a security container to store notes and drafts that contain Classified Information) at a Secure Facility selected by DOE that is suitable for Nevada's review of Classified Information and the preparation of new or amended contentions or other filings based on Classified Information.

2.c. See response to 2.b above.

2.d. New section V.3. Nevada's representatives will seal their derivative work product (in hard-copy or electronic form) in envelopes, and store those envelopes in a security container located at a Secure Facility selected by DOE. Only Nevada's representatives are authorized to open these envelopes. However, at Nevada's request, DOE security personnel not participating in this proceeding may review this derivative work product to determine if it contains Classified Information that could be redacted, to permit Nevada to prepare a filing that does not contain Classified Information. These security personnel shall not disclose the content

of Nevada's derivative work product to anyone participating in this proceeding, other than Nevada's cleared representatives. Nevada does not waive any privilege applicable to derivative work product by giving such work product to the DOE for classification review.

2.e. There is no reason to include the NRC or Nevada in subsections 2 and 3 of the Reservation of Rights provision. These two provisions make clear that the RCMO does not preclude certain arguments by DOE. There are not comparable concerns with respect to the NRC and Nevada.

2.f. DOE, Nevada and the NRC do not believe that it is necessary for a copy of their respective VAL forms to be attached to the RCMO. Internet addresses for each VAL form are nonetheless provided here in the event the PAPO Board elects to attach copies: NRC Form 277 (<http://www.nrc.gov/reading-rm/doc-collections/forms/nrc277.pdf>); DOE Form F 5631.20 (<http://www.directives.doe.gov/pdfs/forms/5631-20.pdf>).

Respectfully submitted,

(signed electronically)

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CERTIFICATE OF SERVICE

I hereby certify that copies of the “**JOINT RESPONSE TO THE BOARD’S FEBRUARY 20, 2009 MEMORANDUM AND ORDER**” have been served today on the following persons by the Nuclear Regulatory Commission’s Electronic Information Exchange.

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