

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

\_\_\_\_\_ )  
In the Matter of )

) Docket No. 63-001-HLW

U.S. DEPARTMENT OF ENERGY )

) ASLBP No. 09-892-HLW-CAB04

(High-Level Waste Repository) )  
\_\_\_\_\_ )

) November 2, 2009

**NUCLEAR ENERGY INSTITUTE’S OBJECTION TO JOINT SUBMISSION  
OF CONTENTION GROUPINGS FOR PHASE I DISCOVERY**

INTRODUCTION

On October 13, 2009, in accordance with Case Management Order #2 (CMO #2), the State of Nevada filed a “Joint Submission of Proposed Contention Groupings for Phase I Discovery” (Joint Proposed Contention Groupings). On page two of the filing, Nevada noted that “The Nuclear Energy Institute (NEI) agrees with the proposed contention groupings with the exception that NEI prefers five contentions from the State of Nevada, *i.e.*, NEV-SAFETY-083, 097, 098, 105, and 109, be relocated from the Corrosion Group to the Drip Shield Group, and reserves the right to file an objection in accordance with CMO #2.” (Emphasis added.) NEI hereby files its Objection.

ANALYSIS

While it is correct that each of the five Nevada contentions enumerated above involve corrosion, they do so in a manner that is peculiar to drip shields and drip-shield performance; specifically:

- NEV-SAFETY-083 involves the issue of whether or not the Department of Energy’s (DOE’s) long-term corrosion tests on drip shield material are appropriately representative of corrosion conditions likely to occur in the

proposed repository. This matter is integral to the larger question of whether or not the drip shields will be able to perform their Important to Waste Isolation (ITWI) function as postulated in DOE's safety analysis.

- NEV-SAFETY-097 involves an assertion by Nevada that degradation of the drip shields will result in a debris field on top of the Alloy C-22 waste packages that the drip shields are designed to protect, and that this debris field would have the effect of accelerating corrosion of the waste package. Because Nevada's assertion about drip shield degradation is based on Nevada's other assertions that this degradation will be "more rapid and extensive than assumed by DOE," it is intrinsically related to each of Nevada's contentions challenging the ability of the drip shields to perform their ITWI function as postulated in DOE's safety analysis.
- NEV-SAFETY-098 involves the matter of whether or not DOE has adequately considered the effect that the interlocking design of the drip shields will have on corrosion at the connector plate locations. This issue is integral to the larger question of whether or not the drip shields will be able to perform their ITWI function as postulated in DOE's safety analysis.
- NEV-SAFETY-105 involves the issue of whether or not DOE's corrosion tests performed in bulk liquid environments are appropriately representative of the dripping conditions likely to occur in the proposed repository. This matter is integral to the larger question of whether or not the drip shields will be able to perform their ITWI function as postulated in DOE's safety analysis.
- NEV-SAFETY-109 involves the issue of whether or not DOE's consideration of bulk aqueous solutions is adequate to describe the corrosive environment likely to affect the drip shields in the proposed repository. Again, this matter is integral to the larger question of whether or not the drip shields will be able to perform their ITWI function as postulated in DOE's safety analysis.

Drip shield performance is dependent upon a number of factors, including corrosion, operating in concert with the other engineered barriers and natural features of the repository to provide an additional layer of protection (which NEI contends is unnecessary) for the wastes intended to be isolated in the proposed repository. During Board hearings these factors, including corrosion, should all be considered together in order to best provide a synoptic and integrated understanding of the function of, performance of, and – most basically, from NEI's perspective – the fundamental need for drip shields. As noted above, each of the five contentions is either integral to a determination of whether or not the drip shields will be able to perform

their ITWI function, or is intrinsically related to other drip shield contentions that are. It is, therefore, important that the Board consider all five of these contentions side-by-side with other contentions addressing essentially the same question in order for it to reach a fully informed determination concerning the capability of the drip shields to perform the ITWI function postulated by DOE, as well as the fundamental need for the drip shields in the first place.

#### CONCLUSION

For the foregoing reasons, NEV-SAFETY-083, 097, 098, 105, and 109 should be included in the Drip Shield Group and removed from the Corrosion Group.

Dated: November 2, 2009

Respectfully submitted,

[electronically signed]  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing "The Nuclear Energy Institute's Objection to Joint Submission of Contention Groupings for Phase I Discovery" have been served upon the following persons on this 2nd day of November, 2009 by Electronic Information Exchange.

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