

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	May 12, 2011

**STATE OF NEVADA'S NOTICE DUCES TECUM OF THE INTENTION
TO TAKE THE ORAL DEPOSITION OF EDWARD THOMAS**

PLEASE TAKE NOTICE that, pursuant to 10 C.F.R. 2.1019, the State of Nevada will take the deposition of Edward Thomas, at 8:00 a.m., on Wednesday, the 13th day of July, 2011.

The deposition will be conducted at Hampton Inn, 4975 Dean Martin Drive, Las Vegas NV 89118 (702.948.8100). Edward Thomas works at USA Repository Services L.L.C., which is located at 1160 North Town Center Drive, Las Vegas, NV 89144 (702.821.7132). The deposition shall be upon oral examination before, and transcribed by, a duly authorized court reporter. The deposition will be transmitted to the Secretary of the United States Nuclear Regulatory Commission for entry in the electronic docket for this proceeding and may be used in evidence therein. The witness will be examined on the following matters, including such information in relation thereto as is reasonably calculated to lead to the discovery of admissible evidence:

1. NEVADA-SAFETY-130
2. NEVADA-SAFETY-143

Edward Thomas shall produce those documents and materials at the time of his

deposition, and ten days prior to his deposition, in the form and on the schedule prescribed in the attached Exhibit A which is incorporated herein for all purposes (10 C.F.R. 2.1019(i)). A copy of the transmittal letter associated with this notice to counsel for the Department of Energy is attached as Exhibit B.

Respectfully submitted,

(signed electronically)

Charles J. Fitzpatrick *

Martin G. Malsch *

John W. Lawrence *

Egan, Fitzpatrick, Malsch & Lawrence, PLLC

12500 San Pedro Avenue, Suite 555

San Antonio, TX 78216

Tel: 210.496.5001

Fax: 210.496.5011

cfitzpatrick@nuclearlawyer.com

mmalsch@nuclearlawyer.com

jlawrence@nuclearlawyer.com

*Special Deputy Attorneys General

Dated: May 12, 2011

EXHIBIT A

10 C.F.R. Section 2.1019(i):

2.1019(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of § 2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section— (i) Personal records; (ii) Travel vouchers; (iii) Speeches; (iv) Preliminary drafts; (v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

Exhibit B

EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC

Counselors at Law

www.nuclearlawyer.com
Joseph R. Egan (1954-2008)

Martin G. Malsch
1750 K Street, N.W. · Suite 350
Washington, D.C. 20006
Tel: 202.466.3106
Fax: 210.496.5011

Charles J. Fitzpatrick
1777 N.E. Loop 410 · Suite 600
San Antonio, TX 78217
Tel: 210.496.5001
Fax: 210.496.5011

John W. Lawrence
9200 Signal Avenue, N.E.
Albuquerque, NM 87122
Tel: 505.610.8564
Fax: 505.797.2950

May 12, 2011

Donald P. Irwin, Esq.
Hunton & Williams, L.L.P.
Riverside Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

Re: Docket No. 63-001

Dear Mr. Irwin,

I am attaching a deposition notice for Edward Thomas, detailing the deposition to be conducted on July 13, 2011, at the location and time specified in the notice. It is being filed today.

During our “meet and confer” telephone calls over the past few weeks, we have indicated to you, and wish to reiterate, our view regarding proceeding with this and other depositions we have discussed. As you know, Nevada did not oppose your motion to temporarily stay this proceeding which you filed with the NRC licensing board (CAB) or the similar motion you filed with the NRC and continues to believe that the licensing proceeding, including discovery, should not go forward until the future of the Yucca Mountain program has been finally clarified in the courts and in Congress.

However, the CAB’s February 25th Order warning that discovery rights could be forfeited for failure to proceed leaves Nevada with little choice but to begin scheduling depositions, while incurring potentially large and unnecessary expenses in the process. We do so only reluctantly because Nevada cannot risk the waiver of its valuable discovery rights.

We continue to be willing to discuss alternate dates, or alternate times, or alternate locations, if the specified ones create a conflict for the witness. In addition, as was the case a

EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC
Counselors at Law

May 12, 2011

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year ago when depositions were planned, we are willing to discuss the matter of documents required to be produced by the witness, in an effort to avoid unduly burdening him.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M G Malsch', followed by a long horizontal line extending to the right.

Martin G. Malsch

cjf:sm:lb
Enclosure

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

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U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Notice of Deposition* has been served upon the following persons by the Electronic Information Exchange:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel

CAB 04

thomas.moore@nrc.gov
paul.ryerson@nrc.gov
richard.wardwell@nrc.gov

Anthony.Eitreim@nrc.gov
djpg2@nrc.gov
katie.tucker@nrc.gov
sara.culler@nrc.gov
Patricia.Harich@nrc.gov
axw5@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
hearingdocket@nrc.gov
elj@nrc.gov
emile.julian@nrc.gov
rll@nrc.gov
evangelina.ngbea@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Comm Appellate Adjudication
OCAAMAIL@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
mitzi.young@nrc.gov
elva.bowdenberry@nrc.gov

michelle.albert@nrc.gov
christopher.hair@nrc.gov
anthony.baratta@nrc.gov
paul.bollwerk@nrc.gov
gpb@nrc.gov
james.cutchin@nrc.gov
mshd.resource@nrc.gov
joseph.deucher@nrc.gov
joseph.gilman@nrc.gov
kg.golshan@nrc.gov
nsg@nrc.gov
roy.hawkens@nrc.gov
daniel.lenehan@nrc.gov
linda.lewis@nrc.gov
ogcmailcenter@nrc.gov
lgm1@nrc.gov
david.mcintyre@nrc.gov
cmp@nrc.gov
tom.ryan@nrc.gov
jack.whetstine@nrc.gov

U.S. Department Of Energy
Office of General Counsel
martha.crosland@hq.doe.gov
nicholas.dinunzio@hq.doe.gov
ben.mcrae@hq.doe.gov
christina.pak@hq.doe.gov
sean.lev@hq.doe.gov
cyrus.nezhad@hq.doe.gov

Office of Counsel, Naval Sea Systems
Command
frank.putzu@navy.mil

For U.S. Department of Energy
Talisman International, LLC
plarimore@talisman-intl.com

For U.S. Department of Energy
dmaerten@caci.com

Counsel for U.S. Department of Energy
Morgan, Lewis, Bockius LLP
lcsedrik@morganlewis.com
cmoldenhauer@morganlewis.com
tpoindexter@morganlewis.com
apolonsky@morganlewis.com
tschmutz@morganlewis.com
dsilverman@morganlewis.com
pzaffuts@morganlewis.com
sstaton@morganlewis.com
rkuyler@morganlewis.com
annette.white@morganlewis.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
kfaglioni@hunton.com
dirwin@hunton.com
mshebelskie@hunton.com
smeharg@hunton.com
enoonan@hunton.com
jwool@hunton.com
bwright@hunton.com

State of Nevada
Attorney General's Office
madams@ag.nv.gov

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence
mmalsch@nuclearlawyer.com
cfitzpatrick@nuclearlawyer.com
jlawrence@nuclearlawyer.com
smontesi@nuclearlawyer.com
lborski@nuclearlawyer.com

State of Nevada
Nuclear Waste Project Office
slynch1761@gmail.com
steve.fr@hotmail.com

Counsel for Nye County, Nevada
Ackerman Senterfitt
robert.andersen@akerman.com

Nye County Regulatory/Licensing Advisor
mrmurphy@chamberscable.com

Nye County Nuclear Waste Repository Project
Office (NWRPO)
zchoate@co.nye.nv.us
csandoval@co.nye.nv.us

Counsel for Lincoln County, Nevada
Whipple Law Firm
bretwhipple@nomademail.com
baileys@lcturbonet.com

Lincoln County District Attorney
lcda@lcturbonet.com

Lincoln County Nuclear Oversight Prgm
jcciac@co.lincoln.nv.us

For Lincoln County and White Pine County,
Nevada
Intertech Services Corporation
mikebaughman@charter.net

Clark County, Nevada
klevorick@co.clark.nv.us
Elizabeth.Vibert@ccdandv.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon, PLC
arobbins@jsslaw.com
droby@jsslaw.com
salleyne@jsslaw.com

Counsel for Eureka County, Nevada
Harmon, Curran, Spielberg & Eisenberg
dcurran@harmoncurran.com

Eureka County, Nevada
Office of District Attorney
tbeutel.ecda@eurekanv.org

Eureka County, Nevada
Public Works
rdamele@eurekanv.org

Eureka County, Nevada
Nuclear Waste Advisory
eurekanrc@gmail.com

For Eureka County, Nevada
NWOP Consulting, Inc.
lpitchford@comcast.net

Counsel for Churchill, Esmeralda, Eureka,
Mineral and Lander Counties
Armstrong Teasdale LLP
jgores@armstrongteasdale.com

Counsel for Churchill, Esmeralda, Eureka,
Mineral and Lander Counties
Kolesar and Leatham
rlist@klnevada.com

Esmeralda County Repository Oversight
Program-Yucca Mountain Project
muellered@msn.com

Mineral County Nuclear Projects Office
yuccainfo@mineralcountynv.org

For Lincoln and White Pine County, Nevada
LSN Administrator
jayson@idtservices.com

Counsel for White Pine County, Nevada
kbrown@mwpower.net

White Pine County (NV) Nuclear Waste
Project Office
wpnucwst1@mwpower.net
wpnucwst2@mwpower.net

Counsel for Inyo County, Nevada
Gregory L. James, Attorney at Law
gljames@earthlink.net

Counsel for Inyo County, Nevada
Law Office of Michael Berger
michael@lawofficeofmichaelberger.com
robert@lawofficeofmichaelberger.com

Inyo County Yucca Mountain Repository
Assessment Office
crichards@inyocounty.us

Attorney General, State of Washington
toddb@atg.wa.gov
andyf@atg.wa.gov
michaeld@atg.wa.gov
leeol@atg.wa.gov
Jonat@atg.wa.gov
dianam@atg.wa.gov
sharonn@atg.wa.gov

California Energy Commission
kwbell@energy.state.ca.us

California Department of Justice
Office of the Attorney General
susan.durbin@doj.ca.gov
brian.hembacher@doj.ca.gov
timothy.sullivan@doj.ca.gov
Michele.Mercado@doj.ca.gov

Counsel for State of South Carolina
Davidson & Lindemann, P.A.
kwoodington@dml-law.com

Counsel for Aiken County, SC
Haynsworth Sinkler Boyd, PA
tgottshall@hsblawfirm.com
rshealy@hsblawfirm.com

Florida Public Service Commission
Office of the General Counsel
cmiller@psc.state.fl.us

Counsel for Native Community
 Action Council
 Alexander, Berkey, Williams & Weathers
 cberkey@abwwlaw.com
 swilliams@abwwlaw.com
 rleigh@abwwlaw.com

Native Community Action Council
 mrizabarte@gmail.com

Counsel for Prairie Island Indian
 Community
 donkeskey@publiclawresourcecenter.com

Prairie Island Indian Community
 pmahowald@piic.org

Nuclear Energy Institute
 mab@nei.org
 awc@nei.org
 ecg@nei.org

Counsel for Nuclear Energy Institute
 Pillsbury Winthrop Shaw Pittman LLP
 jay.silberg@pillsburylaw.com
 timothy.walsh@pillsburylaw.com
 maria.webb@pillsburylaw.com

Counsel for Nuclear Energy Institute
 Winston & Strawn
 whorin@winston.com
 rwilson@winston.com
 drepka@winston.com
 CSisco@winston.com

National Association of Regulatory
 Utility Commissioners
 jramsay@naruc.org
 ddennis@naruc.org

Counsel for Joint Timbisha Shoshone
 Tribal Group
 Fredericks & Peebles, L.L.P.
 dhouck@ndnlaw.com
 jpeebles@ndnlaw.com

sthinelk@ndnlaw.com
 fbrooks@ndnlaw.com
 rcolburn@ndnlaw.com
 seredia@ndnlaw.com
 bniegemann@ndnlaw.com
 rrhoan@ndnlaw.com

Counsel for Joint Timbisha Shoshone
 Tribal Group
 Godfrey & Kahn, S.C.
 sheinzen@gklaw.com
 dpoland@gklaw.com
 aharring@gklaw.com
 jdobie@gklaw.com
 hrenfro@gklaw.com
 jschwartz@gklaw.com

For Joint Timbisha Shoshone Tribal Group
 joekennedy08@live.com
 purpose_driven12@yahoo.com

Caption Reporters, Inc.
 lcarter@captionreporters.com

(signed electronically)
 Laurie Borski, Paralegal