

**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))	August 17, 2009

**NOTICE BY THE STATE OF NEVADA REGARDING
DOE'S JOINT RESPONSE TO JULY 21, 2009 ORDER**

Earlier today, the U.S. Department of Energy ("DOE") filed a pleading entitled "Joint Response to July 21, 2009 Order" that erroneously represented to the Board that "the parties" were jointly submitting the response. The pleading fails to identify which "parties" are supportive of the pleading and thus creates the incorrect impression that all parties are supportive of the pleading. In addition, the pleading incorrectly indicates that the State of Nevada will be filing its differing views only with regard to Board Question 1, when in fact the State of Nevada has differing views from DOE's responses to other questions posed by the Board as well. The State of Nevada is filing this Notice to clarify those misrepresentations.

Counsel for the State of Nevada contacted counsel for DOE on Thursday afternoon, August 13, 2009, and communicated the fact that the State of Nevada would not be joining in the pleading and requested that the pleading so recount that fact (see email attached as Exhibit A). Immediately after today's pleading was filed, counsel for the State of Nevada contacted counsel

for DOE to reiterate the prior communication and specifically requested that the referenced pleading be resubmitted to clarify the misperceptions created and to recount the correct position of the State of Nevada. Counsel for DOE refused to make the clarifying filing, thus confirming the intentional nature of DOE's action.

Accordingly, the State of Nevada hereby notifies the Board that the "Joint Response to July 21, 2009 Order" filed by DOE this afternoon is NOT supported by the State of Nevada. In accordance with the Board's Order of July 21, 2009, the State of Nevada will provide its differing views within five days of today.

Respectfully submitted,

(signed electronically)

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Dated: August 17, 2009

Exhibit A

From: jlawrence@nuclearlawyer.com [mailto:jlawrence@nuclearlawyer.com]

Sent: Thursday, August 13, 2009 1:28 PM

To: Polonsky,Alex S.

Cc: 'george.hellstrom@ymp.gov'; 'frank.putzu@navy.mil'; Schmutz,Thomas Alan; Zaffuts,Paul J.; Silverman,Donald J.; 'nick.dinunzio@rw.doe.gov'; 'kflaglioni@hunton.com'; 'martha.crosland@hq.doe.gov'; 'dirwin@hunton.com'; 'mshebelskie@hunton.com'; 'ben.mcrae@hq.doe.gov'; 'Bupp,Margaret'; 'Timothy Sullivan'; Curtis Berkey; Scott Williams; 'robert.andersen@akerman.com'; 'jgores@armstrongteasdale.com'; 'rlist@armstrongteasdale.com'; 'mberger@bsglaw.net'; 'mmurphy@chamberscable.com'; 'Brian Hembacher'; 'Susan Durbin'; 'gljames@earthlink.net'; 'kwbell@energy.state.ca.us'; 'aharrington@gklaw.com'; 'dpoland@gklaw.com'; 'hrenfro@gklaw.com'; 'sheinzen@gklaw.com'; 'nbrjdv@gmail.com'; 'dcurran@harmoncurran.com'; 'bloveland@jsslaw.com'; 'droby@jsslaw.com'; 'lcda@lcturbonet.com'; 'Darcie Houck'; 'John M. Peebles'; 'awc@nei.org'; 'ecg@nei.org'; 'mab@nei.org'; 'bretwhipple@nomademail.com'; 'cfitzpatrick@nuclearlawyer.com'; 'MMalsch@nuclearlawyer.com'; 'jay.silberg@pillsburylaw.com'; 'timothy.walsh@pillsburylaw.com'; 'drepka@winston.com'; 'rwilson@winston.com'; 'William A. Horin'; 'rwsears@wpcda.org'; Gendelman,Adam; Arobbins@jsslaw.com

Subject: RE: Revised Joint Response to 7/21 CAB Order

Alex:

Thank you for your efforts to prepare a joint response to the 6 questions posed by CAB-04 in their Order of July 21, 2009. Specifically, thank you for incorporating the proposed changes in the text offered by the State of Nevada as well as making several of the changes in SER categorization in the spreadsheets suggested by Nevada. Those changes go a long way to resolving our differences.

Unfortunately, the State of Nevada still has significant differences regarding your categorization of over 25 of our contentions, and also has significant differences in the identification of several of those contentions as legal (or not). We do not believe we can effectively address our differences in your pleading, particularly if the categorization and identification reflect DOE's position with our position relegated to short footnotes to your spreadsheets. In addition, some of our differences are also premised on broader issues that warrant more detailed explanation and discussion than would be possible in the pleading as you have structured it.

Accordingly, and consistent with the July 21st Order, the State of Nevada will be filing its "differing views" in response to the 6 questions five days after you file your pleading. Please do not include the State of Nevada among any identification of the parties that support your pleading although you may represent that the State of Nevada will be filing its own differing views in accordance with the Board's July 21st Order.

Regards,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

In the Matter of)
)
U.S. DEPARTMENT OF ENERGY) Docket No. 63-001-HLW
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(High Level Waste Repository)) August 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice by the State of Nevada Regarding DOE's Joint Response to July 21, 2009 Order has been served upon the following persons by the Electronic Information Exchange:

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