UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

ASLBP BOARD 09-876-HLW-CAB01 William J. Froehlich, Chairman Thomas S. Moore Richard E. Wardwell	ASLBP BOARD 09-877-HLW-CAB02 Michael M. Gibson, Chairman Alan S. Rosenthal Nicholas G. Trikouros	ASLBP BOARD 09-878-HLW-CAB03 Paul S. Ryerson, Chairman Michael C. Farrar Mark O. Barnett

In the Matter of:	)	April 28, 2009
	)	
U.S. Department of Energy	)	
	)	Docket No. 63-001
(High Level Waste Repository	)	
Construction Authorization Application)	)	
	)	

ERRATA TO ANSWER OF THE U.S. DEPARTMENT OF ENERGY TO THE STATE OF NEVADA'S PETITION TO INTERVENE

It has come to the U.S. Department of Energy's (DOE) attention that its Answer to the State of Nevada's Petition to Intervene, filed on January 16, 2009, contains an error in responding to contention NEV-SAFETY-189 (Patent 27-83-0002).[1] The error concerns footnote # 119. Attached is a table (Attachment 1), which identifies the page on which this error occurs and identifies the text to be corrected. Also attached is a replacement for the affected page (Attachment 2), which reflects the correction identified in the table.

Footnote # 119 of DOE's Answer to this contention identified administrative errors in the License Application regarding the patent ownership and associated patent area acreage of Patent

[1] On February 17, 2009, the U.S. Department of Energy submitted "Errata to Answer of the U.S. Department of Energy to the State of Nevada's Petition to Intervene," which identified minor errors, mostly to citations, on nine pages of the 2,048-page document.

27-83-0002. DOE's Answer correctly stated that the Patented Mining Claim was granted to Hollie O. Allen for 182.5 acres. In doing so, however, the Answer attributed the errors in the License Application to errors in a U.S. Department of Interior Bureau of Land Management mining claim geographic report. In fact, that report was not incorrect but was misread by a DOE reviewer. Accordingly, the language from DOE's Answer regarding the mining claim geographic report is now being deleted by the correction submitted today. This correction should have no impact on the Licensing Boards' deliberations with respect to this contention, but is being provided simply to ensure that the record before the Licensing Boards is accurate.

Respectfully submitted,

Signed electronically by Alex S. Polonsky

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Dated in Washington, DC
this 28th day of April 2009

Attachment 1

ERRATA TO ANSWER OF THE U.S. DEPARTMENT OF ENERGY TO THE STATE OF NEVADA'S PETITION TO INTERVENE

Page Number; Footnote Number; Line Numbers	**Correction:**
Page 1753; Footnote 119 Line Numbers 6–9	Delete: "According to the DOE Land Records report noted above (Appendix F), the U.S. Department of Interior Bureau of Land Management Mining Claim Geographic Report indicates that although the claimant is listed as Hollie O. Allen, the claim name is given as Cind-R-Lite."

Attachment 2

DEN001574941). And Nevada is aware of this fact because it cites this reference in its contention. Petition at 996.[119]

With respect to actual compliance with waste-isolation requirements, set forth in § 63.121(b), the Application reports that "activities associated with Patent 27-83-0002 have been assessed, and that assessment has determined that because the claim is physically remote and down the aquifer gradient from Yucca Mountain, the mining activities do not present an adverse human action that reduces the ability of the repository to isolate waste." SAR at 5.8-5. The contention does not challenge this sufficient assertion of compliance with the regulation.

With respect to compliance with § 63.121(c), DOE must exercise jurisdiction or control over activities as necessary to ensure that the release and exposure requirements of § 63.111(a) and (b) are met. SAR Section 5.8.3.1 at 5.8-7, sets forth DOE's general approach to meeting these requirements and refers to SAR Section 1.8 for more detailed discussion. As discussed in SAR Section 1.8, doses to individuals within the area of Patent 27-83-0002 did not need to be and were not specifically calculated in the SAR because that area is not a location of one of the maximum dose receptors that are discussed in SAR Section 1.8.1.4.3. The maximum dose receptors are specified at the locations of the highest annual average and 95th-percentile atmospheric dispersion factors for potential radioactive material releases from within the GROA. For the general environment, that receptor is at the SSE site boundary (*i.e.*, wind from the NNW)

119 The contention also raises inconsistencies regarding DOE's statement of patent ownership and associated patent area acreage, but this does not raise a genuine dispute because the patent is not within the proposed land withdrawal area. It also is not material because it is administrative in nature, and therefore would not affect the outcome of the proceeding. *See, e.g.*, *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 333–34 (1999) ("The dispute at issue is material if its resolution would make a difference in the outcome of the licensing proceeding.") (internal quotations and citation omitted). SAR Section 5.8.2.2.1 incorrectly inferred that the plot was "owned" by Cind-R-Lite. SAR at 5.8-5. The acreage of the plot (stated as 203 acres) also was in error. The Patented Mining Claim was granted to Hollie O. Allen for 182.5 acres.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "**ERRATA TO ANSWER OF THE U.S. DEPARTMENT OF ENERGY TO THE STATE OF NEVADA'S PETITION TO INTERVENE,**" have been served on the following persons this 28th day of April 2009 through the Nuclear Regulatory Commission's Electronic Information Exchange.

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