

September 11, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of	)	
	)	Docket No. 63-001-HLW
U.S. DEPARTMENT OF ENERGY	)	
	)	ASLBP Nos. 09-876-HLW-CAB01
(High-Level Waste Repository)	)	09-877-HLW-CAB02
	)	09-878-HLW-CAB03
	)	09-892-HLW-CAB04

NRC STAFF ANSWER TO THE  
STATE OF NEVADA'S MOTION FOR LEAVE TO FILE  
NEW CONTENTION AND PROPOSED CONTENTION NEVADA SAFETY 206

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1) and the “[Construction Authorization Board] Case Management Order #1,” dated January 29, 2009 (CMO # 1) (unpublished) at 4, the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby files its answer to the “State of Nevada’s Motion for Leave to File New Contention Based on Newly Available Information” (Motion), and proposed contention NEV-SAFETY-206 (attached to the Motion as Exhibit A), filed August 24, 2009. For the reasons set forth below, the Staff does not oppose Nevada’s motion for leave to file proposed contention NEV-SAFETY-206, and does not object to the admission of the proposed contention.

BACKGROUND

On June 3, 2008, the Department of Energy (DOE) submitted the Yucca Mountain Repository License Application to the NRC, seeking authorization to construct a geologic repository at Yucca Mountain, Nevada, in accordance with the provisions of 10 C.F.R. Part 63. See Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008); Yucca Mountain; Notice of Receipt and Availability of Application; Correction,

73 Fed. Reg. 40,883 (July 16, 2008). After the Staff docketed the License Application,<sup>1</sup> the Commission issued a “Notice of Hearing and Opportunity to Petition for Leave to Intervene,” *U.S. Dept’ of Energy* (High-Level Waste Repository), CLI-08-25, 68 NRC 497 (2008). The Notice of Hearing was subsequently published in the *Federal Register* on October 22, 2008.<sup>2</sup> In response to the Notice of Hearing, Nevada filed a timely intervention petition, and is one of the parties admitted to this proceeding.<sup>3</sup>

Three Construction Authorization Boards (CABs or Boards) were established to preside over the petitions to intervene and requests to participate in this licensing proceeding. U.S. Department of Energy; Establishment of Atomic Safety Licensing Boards, 74 Fed. Reg. 4477 (Jan. 26, 2009). On June 19, 2009, the Chief Administrative Judge established Construction Authorization Board 04 to, among other things, preside over matters concerning new or amended contentions. See Establishment of Atomic Safety and Licensing Board; Department of Energy, 74 Fed. Reg. 30,644 (June 26, 2009).

On August 24, 2009, Nevada filed the instant motion and proposed contention. NEV-SAFETY-206 alleges that DOE’s Alloy-22 corrosion modeling is inadequate because it relies upon flawed experimental data. See NEV-SAFETY-206 at 1.

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<sup>1</sup> Department of Energy; Notice of Acceptance for Docketing of a License Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, 73 Fed. Reg. 53,284 (Sept. 15, 2008).

<sup>2</sup> In the Matter of U.S. Department of Energy (High-Level Waste Repository); Notice of Hearing and Opportunity To Petition for Leave to Intervene on an Application for Authority To Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, 73 Fed. Reg. 63,029 (Oct. 22, 2008).

<sup>3</sup> See *U.S. Dep’t of Energy*, LBP-09-06, 69 NRC \_\_\_, slip op. (May 11, 2009); see also *U.S. Dep’t of Energy*, CLI-09-14, 69 NRC \_\_\_, slip op. (June 30, 2009).

DISCUSSION

A. Legal Standards Governing New or Amended Contentions

Pursuant to 10 C.F.R. § 2.309(f)(2) and CMO #1, new or amended contentions are considered timely if they are based upon new and materially different information than was previously available, and filed within 30 days of when that information became available. See 10 C.F.R. § 2.309(f)(2)(i)-(iii); see also CMO #1 at 3-4. The Staff has previously addressed contention admissibility requirements generally, and will not repeat them here. See “NRC Staff Answer to Intervention Petitions,” dated February 9, 2009, at 34-39.

B. Proposed Contention NEV-SAFETY-206

**NEV-SAFETY-206 – INADEQUATE DOE WEIGHT-LOSS MEASUREMENT FOR GENERAL-CORROSION TESTING OF ALLOY-22**

SAR Subsection 2.3.6.2.2, 2.3.6.3 and similar subsections, which deal with waste package degradation and general corrosion testing of Alloy-22, inadequately address generalized corrosion because they rely on flawed experimental data.

NEV-SAFETY-206 at 1. Nevada’s new contention references two recent DOE condition reports. The reports describe deposits found on Alloy-22 coupons that were corrosion-tested for 5 years (Licensing Support Network (LSN) Accession No. DEN001614731), and a waxy substance found on coupons that were corrosion-tested for 9.5 years (LSN Accession No. DEN001614752). Nevada asserts that these findings invalidate the experimental data DOE relies upon its License Application, NEV-SAFETY-206 at 5, and that therefore, the License Application does not comply with various requirements of 10 C.F.R. Part 63. *Id.* at 7. Attached to the proposed contention, as exhibits 1 and 2, are affidavits and curricula vitae of Maurice E. Morgenstein and Michael C. Thorne, both adopting paragraphs 5 and 6 of the proposed contention as their opinion.

C. Staff Response

The Staff does not oppose Nevada's motion for leave to file the proposed contention, as the contention appears to be based upon previously unavailable and materially different information, the referenced DOE condition reports. Nevada states that these documents were made available on the LSN on July 31, 2009, as confirmed by the LSN Administrator. Motion at 1. Thus, the Motion appears timely because it was filed within 30 days of the date the cited reports became available. The proposed contention appears to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Thus, the Staff does not object to the admission of proposed contention NEV-SAFETY-206.

CONCLUSION

For the reasons set forth above, the Staff does not oppose Nevada's motion for leave to file proposed contention NEV-SAFETY-206, and does not object to admission of the proposed contention.

Respectfully submitted,

**/Signed (electronically) by/**

Adam S. Gendelman  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15D21  
Washington, DC 20555-0001  
(301) 415-8445  
[Adam.Gendelman@nrc.gov](mailto:Adam.Gendelman@nrc.gov)

Dated at Rockville, Maryland  
this 11<sup>th</sup> day of September, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO THE STATE OF NEVADA'S MOTION FOR LEAVE TO FILE NEW CONTENTION AND PROPOSED CONTENTION NEVADA SAFETY 206" in the above-captioned proceeding have been served on the following persons this 11<sup>th</sup> day of September, 2009, by Electronic Information Exchange.

CAB 01

William J. Froehlich, Chairman  
Thomas S. Moore  
Richard E. Wardwell  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-mail: [wjf1@nrc.gov](mailto:wjf1@nrc.gov)  
[tsm2@nrc.gov](mailto:tsm2@nrc.gov)  
[rew@nrc.gov](mailto:rew@nrc.gov)

CAB 04

Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-mail: [tsm2@nrc.gov](mailto:tsm2@nrc.gov)  
[psr1@nrc.gov](mailto:psr1@nrc.gov)  
[rew@nrc.gov](mailto:rew@nrc.gov)

CAB 02

Michael M. Gibson, Chairman  
Alan S. Rosenthal  
Nicholas G. Trikouros  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-mail: [mmg3@nrc.gov](mailto:mmg3@nrc.gov)  
[axr@nrc.gov](mailto:axr@nrc.gov)  
[nqt@nrc.gov](mailto:nqt@nrc.gov)

Office of the Secretary  
ATTN: Docketing and Service  
Mail Stop: O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov)

Office of Commission Appellate  
Adjudication  
[ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

CAB 03

Paul S. Ryerson, Chairman  
Michael C. Farrar  
Mark O. Barnett  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-mail: [psr1@nrc.gov](mailto:psr1@nrc.gov)  
[mcf@nrc.gov](mailto:mcf@nrc.gov)  
[mob1@nrc.gov](mailto:mob1@nrc.gov)  
[mark.barnett@nrc.gov](mailto:mark.barnett@nrc.gov)

Charles J. Fitzpatrick, Esq.  
John W. Lawrence, Esq.  
Egan, Fitzpatrick, Malsch & Lawrence PLLC  
12500 San Pedro Avenue, Suite 555  
San Antonio, TX 78216  
E-mail: [cfitzpatrick@nuclearlawyer.com](mailto:cfitzpatrick@nuclearlawyer.com)  
[jlawrence@nuclearlawyer.com](mailto:jlawrence@nuclearlawyer.com)

Martin G. Malsch, Esq.  
Egan, Fitzpatrick & Malsch, PLLC  
1750 K Street, N.W. Suite 350  
Washington, D.C. 20006  
E-mail: [mmalsch@nuclearlawyer.com](mailto:mmalsch@nuclearlawyer.com)

Brian W. Hembacher, Esq.  
Deputy Attorney General  
California Attorney General's Office  
300 South Spring Street  
Los Angeles, CA 90013  
E-mail: [brian.hembacher@doj.ca.gov](mailto:brian.hembacher@doj.ca.gov)

Timothy E. Sullivan, Esq.  
Deputy Attorney General  
California Department of Justice  
1515 Clay Street., 20<sup>th</sup> Flr.  
P.O. Box 70550  
Oakland, CA 94612-0550  
E-mail: [timothy.sullivan@doj.ca.gov](mailto:timothy.sullivan@doj.ca.gov)

Kevin W. Bell, Esq.  
Senior Staff Counsel  
California Energy Commission  
1516 9<sup>th</sup> Street  
Sacramento, CA 95814  
E-mail: [kwbell@energy.state.ca.us](mailto:kwbell@energy.state.ca.us)

Bryce C. Loveland  
Jennings Strouss & Salmon, PLC  
8330 W. Sahara Avenue, Suite 290  
Las Vegas, NV 89117-8949  
Email: [bloveland@jsslaw.com](mailto:bloveland@jsslaw.com)

Alan I. Robbins, Esq.  
Debra D. Roby, Esq.  
Jennings Strouss & Salmon, PLC  
1700 Pennsylvania Ave, NW Suite 500  
Washington, D.C. 20005  
E-mail: [arobbins@jsslaw.com](mailto:arobbins@jsslaw.com)  
[droby@jsslaw.com](mailto:droby@jsslaw.com)

Donald J. Silverman, Esq.  
Thomas A. Schmutz, Esq.  
Thomas C. Poindexter, Esq.  
Paul J. Zaffuts, Esq.  
Alex S. Polonsky, Esq.  
Lewis Csedrik, Esq.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
E-mail: [dsilverman@morganlewis.com](mailto:dsilverman@morganlewis.com)  
[tschmutz@morganlewis.com](mailto:tschmutz@morganlewis.com)  
[tpoindexter@morganlewis.com](mailto:tpoindexter@morganlewis.com)  
[pzaffuts@morganlewis.com](mailto:pzaffuts@morganlewis.com)  
[apolonsky@morganlewis.com](mailto:apolonsky@morganlewis.com)  
[lcsedrik@morganlewis.com](mailto:lcsedrik@morganlewis.com)

Malachy R. Murphy, Esq.  
18160 Cottonwood Rd. #265  
Sunriver, OR 97707  
E-mail: [mrmurphy@chamberscable.com](mailto:mrmurphy@chamberscable.com)

Robert M. Andersen  
Akerman Senterfitt  
801 Pennsylvania Avenue N.W., Suite 600  
Washington, DC 20004 USA  
E-mail: [robert.andersen@akerman.com](mailto:robert.andersen@akerman.com)

Martha S. Crosland, Esq.  
Angela M. Kordyak, Esq.  
Nicholas P. DiNunzio  
James Bennett McRae, Esq.  
U.S. Department of Energy  
Office of the General Counsel  
1000 Independence Avenue, S.W.  
Washington, DC 20585  
E-mail: [martha.crosland@hq.doe.gov](mailto:martha.crosland@hq.doe.gov)  
[angela.kordyak@hq.doe.gov](mailto:angela.kordyak@hq.doe.gov)  
[nick.dinunzio@rw.doe.gov](mailto:nick.dinunzio@rw.doe.gov)  
[ben.mcrae@hq.doe.gov](mailto:ben.mcrae@hq.doe.gov)

George W. Hellstrom  
U.S. Department of Energy  
Office of General Counsel  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321  
E-Mail: [george.hellstrom@ymp.gov](mailto:george.hellstrom@ymp.gov)

Jeffrey D. VanNiel, Esq.  
530 Farrington Court  
Las Vegas, NV 89123  
E-mail: [nbridvn@gmail.com](mailto:nbridvn@gmail.com)

Susan L. Durbin, Esq.  
Deputy Attorney General  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244-2550  
E-mail: [susan.durbin@doj.ca.gov](mailto:susan.durbin@doj.ca.gov)

Frank A. Putzu  
Naval Sea Systems Command Nuclear  
Propulsion Program  
1333 Isaac Hull Avenue, S.E.  
Washington Navy Yard, Building 197  
Washington, DC 20376  
E-mail: [frank.putzu@navy.mil](mailto:frank.putzu@navy.mil)

John M. Peebles  
Darcie L. Houck  
Fredericks Peebles & Morgan LLP  
1001 Second Street  
Sacramento, CA 95814  
E-mail: [jpeebles@ndnlaw.com](mailto:jpeebles@ndnlaw.com)

Ellen C. Ginsberg  
Michael A. Bauser  
Anne W. Cottingham  
Nuclear Energy Institute, Inc.  
1776 I Street, N.W., Suite 400  
Washington, D.C. 20006  
E-mail: [ecg@nei.org](mailto:ecg@nei.org)  
[mab@nei.org](mailto:mab@nei.org)  
[awc@nei.org](mailto:awc@nei.org)

David A. Repka  
William A. Horin  
Rachel Miras-Wilson  
Winston & Strawn LLP  
1700 K Street N.W.  
Washington, D.C. 20006  
E-mail: [drepka@winston.com](mailto:drepka@winston.com)  
[whorin@winston.com](mailto:whorin@winston.com)  
[rwilson@winston.com](mailto:rwilson@winston.com)

Jay E. Silberg  
Timothy J.V. Walsh  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1122  
E-mail: [jay.silberg@pillsburylaw.com](mailto:jay.silberg@pillsburylaw.com)  
[timothy.walsh@pillsburylaw.com](mailto:timothy.walsh@pillsburylaw.com)

Gregory L. James  
710 Autumn Leaves Circle  
Bishop, California 93514  
Email: [gljames@earthlink.net](mailto:gljames@earthlink.net)

Arthur J. Harrington  
Godfrey & Kahn, S.C.  
780 N. Water Street  
Milwaukee, WI 53202  
E-mail: [aharring@gklaw.com](mailto:aharring@gklaw.com)

Steven A. Heinzen  
Douglas M. Poland  
Hannah L. Renfro  
Godfrey & Kahn, S.C.  
One East Main Street, Suite 500  
P.O. Box 2719  
Madison, WI 53701-2719  
E-mail: [sheinzen@gklaw.com](mailto:sheinzen@gklaw.com)  
[dpoland@gklaw.com](mailto:dpoland@gklaw.com)  
[hrenfro@gklaw.com](mailto:hrenfro@gklaw.com)

Robert F. List, Esq.  
Jennifer A. Gores, Esq.  
Armstrong Teasdale LLP  
1975 Village Center Circle, Suite 140  
Las Vegas, NV 89134-6237  
E-mail: [rlist@armstrongteasdale.com](mailto:rlist@armstrongteasdale.com)  
[jgores@armstrongteasdale.com](mailto:jgores@armstrongteasdale.com)

Diane Curran  
Harmon, Curran, Spielberg, & Eisenberg,  
L.L.P.  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Ian Zabarte, Board Member  
Native Community Action Council  
P.O. Box 140  
Baker, NV 89311  
E-mail: [mrizabarte@gmail.com](mailto:mrizabarte@gmail.com)

Richard Sears  
District Attorney No. 5489  
White Pine County District Attorney's Office  
801 Clark Street, Suite 3  
Ely, NV 89301  
E-mail: [rwsears@wpcda.org](mailto:rwsears@wpcda.org)

Donald P. Irwin  
Michael R. Shebelskie  
Kelly L. Faglioni  
Hunton & Williams LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074  
E-mail: [dirwin@hunton.com](mailto:dirwin@hunton.com)  
[mshebelskie@hunton.com](mailto:mshebelskie@hunton.com)  
[kfaglioni@hunton.com](mailto:kfaglioni@hunton.com)

Curtis G. Berkey  
Scott W. Williams  
Rovianne A. Leigh  
Alexander, Berkey, Williams, & Weathers  
LLP  
2030 Addison Street, Suite 410  
Berkley, CA 94704  
E-mail: [cberkey@abwwlaw.com](mailto:cberkey@abwwlaw.com)  
[swilliams@abwwlaw.com](mailto:swilliams@abwwlaw.com)  
[rleigh@abwwlaw.com](mailto:rleigh@abwwlaw.com)

Bret O. Whipple  
1100 South Tenth Street  
Las Vegas, Nevada 89104  
E-mail: [bretwhipple@nomademail.com](mailto:bretwhipple@nomademail.com)

Gregory Barlow  
P.O. Box 60  
Pioche, Nevada 89043  
E-mail: [lcd@lcturbonet.com](mailto:lcd@lcturbonet.com)

Connie Simkins  
P.O. Box 1068  
Caliente, Nevada 89008  
E-mail: [jcciac@co.lincoln.nv.us](mailto:jcciac@co.lincoln.nv.us)

Dr. Mike Baughman  
Intertech Services Corporation  
P.O. Box 2008  
Carson City, Nevada 89702  
E-mail: [bigoff@aol.com](mailto:bigoff@aol.com)

Michael Berger  
Robert S. Hanna  
Attorney for the County of Inyo  
233 East Carrillo Street Suite B  
Santa Barbara, California 93101  
E-mail: [mberger@bsglaw.net](mailto:mberger@bsglaw.net)  
[rshanna@bsglaw.net](mailto:rshanna@bsglaw.net)

**/Signed (electronically) by/**

Adam S. Gendelman  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O-15D21  
Washington, DC 20555-0001  
(301) 415-8445  
[Adam.Gendelman@nrc.gov](mailto:Adam.Gendelman@nrc.gov)