

November 2009  
High-level Waste Hearings  
Summary Table

# High-Level Waste hearing

Request for Additional Information table (RAI's) [here](#)

## ORDERS Electronic Hearing Docket Board Orders for Oct (CAB01, CAB02, CAB03)

Date	Nov 18	Nov 20	
	<p><b><u>ORDER</u></b> (Addressing the NRC Staff's Motion for Leave to Amend Privilege Log Certification)</p> <p>Before us is the NRC Staff's motion<sup>1</sup> to revise the language of the privilege log certification provisions of the Pre-License Application Presiding Officer (PAPO) Board's Revised Second Case Management Order and Fifth Case Management Order. The provisions in question from those PAPO Board Orders were adopted by the Construction Authorization Boards in CAB Case Management Order #1. In a recent order denying the Staff's motion for leave to correct its July 30, 2009 deliberative process log, we quoted and explained a number of those applicable provisions. Because the PAPO Board Orders, as well as our recent October 7, 2009 Order, are clear and unambiguous; we will not repeat the applicable provisions.</p> <ul style="list-style-type: none"><li>• The certification accompanying the monthly supplementation covers only the newly supplemented material even though that information appears in two places, including the updated version of the cumulative privilege log.</li><li>• Minor errors, when subsequently discovered, are not deserving of correction and only "materially incorrect or misleading information" must be corrected by counsel.</li><li>• The Staff also asks that it be granted an extension of time to file its November privilege log supplementation until one day after the Board rules on its motion. Although the better practice would have been for the Staff to seek such relief before the eve of the due date, the Staff's request is granted.</li></ul>	<p><b><u>ORDER</u></b> (Filing and Accessing Pleadings)</p> <p>All Licensing Board E-Filing submissions in the construction authorization phase of the Yucca Mountain High Level Waste Repository Proceeding shall be directed to Construction Authorization Board (CAB) 04. The E-Filing system drop-down list selection for the proceeding has been revised to reflect this change. Participant CAB filings also should be captioned as being submitted only to CAB04.</p> <p>All filings made to, or issuances by, CAB04 may be found in the CAB04 file in the agency's High-Level Waste Electronic Hearing Docket (HLW EHD). Filings previously made to, or issuances by, CAB01, CAB02, and/or CAB03 can be found under the HLW EHD folders bearing those designations.</p>	

## MOTIONS AND PLEADINGS

Date	Oct 29	Oct 30	Oct 31
	<p><a href="#"><u>NRC STAFF FILING REGARDING IDENTIFICATION OF OTHER WITNESSES</u></a>            On September 30, 2009, Construction Authorization Board-04 ("the Board") issued "CAB Case Management Order #2" ("Order"), addressing matters related to discovery in the above-captioned proceeding. The Order authorized discovery for Phase I of the proceeding, and directed each party, including the NRC staff ("Staff") with respect to Phase I National Environmental Policy Act contentions, to identify, within 30 days of the Order, those witnesses it intends to depose who have not been previously identified as party witnesses ("Other Witnesses").</p> <p>At this time, the Staff does not intend to depose any Other Witnesses. Pursuant to the Order, the Staff will provide an update within 60 days. See Order at 6.</p>	<p><a href="#"><u>NRC STAFF COMMENTS REGARDING CONTENTION CONSOLIDATION</u></a>            Consistent with "CAB Case Management Order #2," dated September 30, 2009, issued by Construction Authorization Board-04 (Board) the NRC staff (Staff) hereby comments on the Joint Proposal to Consolidate Contentions of Clark County, Nevada, State of Nevada and Inyo County, California, dated October 13, 2009 (Consolidation Proposal).<sup>1</sup> The Consolidation Proposal seeks to consolidate nineteen (19) separate volcanism contentions into nine (9) consolidated contentions.</p> <p><u>DISCUSSION</u>            The Staff does not object to any of the proposed consolidations. However, the Staff believes that the scope of certain proposed contention consolidations are unclear and should be clarified.</p>	<p><a href="#"><u>INYO COUNTY, CALIFORNIA'S IDENTIFICATION OF OTHER WITNESSES</u></a>            Pursuant to Section C.1 of "CAB Case Management Order #2" ("CMO #2") issued on September 30, 2009, Inyo County, California hereby identifies the following "Other Witness" not previously identified as a "Party Witness" that the County intends to depose in support or defense of the contention(s) so identified.</p>
Date	Nov 2	Nov 2	Nov 2
	<p><a href="#"><u>NUCLEAR ENERGY INSTITUTE'S OBJECTION TO JOINT SUBMISSION OF CONTENTION GROUPINGS FOR PHASE I DISCOVERY</u></a>            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>i.e.</i>, 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.)</p> <p>NEI filed an objection.</p>	<p><a href="#"><u>STATE OF NEVADA'S INITIAL IDENTIFICATION OF OTHER WITNESSES</u></a>            Pursuant to Section C.1 of CAB Case Management Order #2 (September 30, 2009), the State of Nevada ("Nevada") identifies the following "Other Witnesses," not identified as "Party Witnesses," which Nevada may depose in this proceeding. (see link)</p>	<p><a href="#"><u>STATE OF NEVADA'S CORRECTION TO ITS INITIAL PARTY WITNESS LIST FOR PHASE I DISCOVERY</u></a>            .... Francis S. Kendorski, discovered that he had inadvertently omitted from his relevant data one deposition which he gave within the last four years. The purpose of this filing is to supply the missing deposition information which is contained in Exhibit 7B, attached.</p>

Date	Nov 2	Nov 9	Nov 9
	<p><a href="#"><u>INITIAL NOTICE OF WHITE PINE COUNTY'S OTHER WITNESSES</u></a></p>	<p><a href="#"><u>JOINT RESPONSE OF CLARK COUNTY, NEVADA AND INYO COUNTY, CALIFORNIA TO NRC STAFF'S COMMENTS REGARDING CONSOLIDATION OF CONTENTIONS</u></a></p> <p>On October 13, 2009, Clark County, Nevada ("Clark County") filed a Joint Proposal to Consolidate Contentions of Clark County, Nevada, State of Nevada and Inyo County, California (Collectively, "the Consolidating Parties"), pursuant to Section B of CAB Case Management Order #2 ("CMO #2"), issued on September 30, 2009. Therein, the Consolidating Parties proposed to consolidate NEV-SAFETY-150 through 152 and NEV-SAFETY-154 through 158 with CLK-SAFETY-003 through 005 and CLK-SAFETY-007 through 011, respectively, and to consolidate NEV-SAFETY-153, INY-SAFETY-003 and CLK-SAFETY-006, resulting in a total of nine volcanism contentions ("Volcanism Contentions"). On October 30, 2009, the NRC Staff filed "comments" regarding this request for contention consolidation.</p> <p>Pursuant to CMO #2, Section B (at 5), Clark County and Inyo County, California ("Inyo County") (collectively, "the Counties") hereby file a joint response to the NRC Staff's Comments. The Counties urge the Board to reject NRC Staff's Comments because they are directly at odds with CMO #2, the NRC Staff's prior agreement to the June 10, 2009 "Joint Proposed Process and Schedule for Grouping and Consolidating Contentions," and the fact that all of the Volcanism Contentions were admitted by the CABs in their entirety.</p>	<p><a href="#"><u>NRC STAFF MOTION REQUESTING EXTENSION OF TIMEFRAME ASSOCIATED WITH WITHDRAWAL OR WAIVER OF PRIVILEGE CLAIM</u></a></p> <p>Pursuant to 10 C.F.R. § 2.323, the NRC staff (Staff) hereby moves Construction Authorization Board-04 (Board) to extend the three-day timeframe associated with withdrawal or waiver of a privilege claim set forth in the Revised Second Case Management Order (RSCMO). "Revised Second Case Management Order," dated July 6, 2007, at 10. Based upon the grounds set for below, the motion should be granted.</p> <ol style="list-style-type: none"> <li>1. The RSCMO provides that "[a] potential party that withdraws or waives a privilege claim for a document shall, within three (3) days, make all necessary corrections to its [Licensing Support Network (LSN)] document collection and privilege logs." <i>Id.</i></li> <li>2. The Staff and Nevada have been engaged in consultations in an effort to reach a resolution regarding the disclosure of privileged documents listed in the Staff's privilege log filed on July 30, 2009. As a result of these discussions, the Staff is considering waiving its privilege</li> <li>3. In order for the NRC staff to add documents to its LSN collection that had previously been identified by "headers only," OIS must modify header records, link the new header to an image and/or text file, and check to make sure that documents being submitted are not duplicates of documents already available on the LSN. <i>Id.</i> These OIS activities take up to 12 hours and, therefore, may require more than one business day to complete, depending on the time they commence.</li> <li>4. The grant of the motion would be consistent with the Board's objectives for the proceeding, maximize the effectiveness of negotiations between participants regarding disclosure of documents, and avoid burdening the Board and participants with repeated last-minute extension requests in the event it becomes apparent that the current 3-day period cannot be met.</li> <li>5. In accordance with the requirements of 10 C.F.R. § 2.323(b), counsel for the Staff certifies that the Staff made a good faith effort to contact counsel for the other parties regarding this motion.</li> </ol>

Date	Nov 9	Nov 12	Nov 12
	<p><a href="#"><u>STATE OF NEVADA'S REPLY TO NRC STAFF'S COMMENTS REGARDING CONTENTION CONSOLIDATION</u></a></p> <p>State of Nevada ("Nevada") replies as follows to "NRC Staff Comments Regarding Contention Consolidation" ("Comments"), in accordance with Section B (at 5) of CAB Case Management Order #2 (September 30, 2009) (CMO#2). Nevada will show that the NRC Staff's ("Staff") October 30 filing is not, as Staff claims, "consistent with CMO#2," and is also not consistent with commitments made by Staff in a previous filing on the very same subject.</p>	<p><a href="#"><u>William D Peterson, 300-year spent nuclear fuel permanent disposal solution</u></a>  <a href="#"><u>Third Party License Appellant Applicant</u></a></p> <p>Questions are asked: Is the intent in this matter to bury and close the nuclear power industry? If so, putting unprocessed SNF into geological storage in Yucca Mountain (YM) for an incomprehensible length of time (10,000 years to one million years) is going to bring the nuclear power industry to closure for the U.S., will it not?.....</p>	<p><a href="#"><u>STATE OF NEVADA REPLY TO NUCLEAR ENERGY INSTITUTE OBJECTION TO JOINT SUBMISSION OF CONTENTION GROUPINGS FOR PHASE I DISCOVERY</u></a></p> <p>... Nevada files this Reply to NEI's Objection.</p> <ol style="list-style-type: none"> <li>1. Nevada opposes NEI's proposal to relocate five Nevada contentions involving drip shields from the groups already identified in the Contention Groupings pleading for the following three reasons. First, the groupings of contentions identified in the Contention Groupings pleading are supported by all Petitioners (other than NEI) as well as the Department of Energy ("DOE"), and the U.S. Nuclear Regulatory Commission ("NRC") Staff is not opposed to those groupings....</li> <li>2. NEI has two contentions that will be subject to discovery during Phase I of this proceeding; however, only one contention – NEI-SAFETY-006 (drip shields are not necessary) – involves drip shields....</li> <li>3. NEI justifies its proposal to change groupings for each of the five specific Nevada contentions involving drip shields with a single argument – "[t]his 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."...</li> <li>4. Nevada maintains that the drip shields are an integral part of the disposal system proposed by DOE for the Yucca Mountain repository and cannot be considered separately from that system, except as may be necessary to determine compliance with the requirements for multiple barriers.</li> <li>5. NEV-SAFETY-083 challenges the corrosion test methods used for drip shields. See Nevada Petition to Intervene at 448-53....</li> <li>6. NEV-SAFETY-097 asserts that DOE's model for drip shield corrosion fails to recognize that the degradation of the drip shield will cause a debris field that collects on the surface of the waste containers and that this debris can accelerate C-22 corrosion....</li> </ol>

			<p>7. NEV-SAFETY-098 argues that the drip shield connector plate and plate sections, due to the interlocking design, form crevices that have the potential to provide a locus for stress corrosion cracking ("SSC") driven by concentrations of chloride and fluoride in unsaturated zone waters. See Nevada Petition to Intervene at 528-31.</p> <p>8. NEV-SAFETY-109 argues that in DOE's evaluation of uniform and localized corrosion and SCC of Ti-7 only bulk aqueous solutions were considered despite evidence that liquid phases (i.e., concentrated salt solutions or molten salts) that are capable of causing corrosion can be formed. See Nevada Petition to Intervene at 579-582.</p> <p><b>Conclusion</b> Based upon the foregoing, Nevada respectfully requests the Board to reject NEI's Objection. In accordance with CMO #2 at 5, Nevada also respectfully requests the Board to issue an order setting forth the groupings of contentions for Phase I consistent with the Contention Groupings pleading filed on October 13, 2009.</p>
<b>Date</b>	<b>Nov 13</b>	<b>Nov 13</b>	
	<p><a href="#">Letter to Chairman Jaczko from Marvin Fertel, NEI, Requesting the commission direct activities related to the adjudicatory proceedings for Yucca Mountain Licensing Application to be suspended.</a></p> <p>Dear Chairman Jaczko: On behalf of the commercial nuclear industry, I am writing to request that the Nuclear Regulatory Commission limit the expenditure of resources on the Department of Energy's ("DOE") application seeking construction authorization for a high-level radioactive waste disposal repository at Yucca Mountain. While we support continuation of the licensing process, as discussed herein we believe there is a compelling basis for the Commission to focus agency resources solely on the technical review of DOE's applications rather than conducting adjudicatory proceedings in parallel.</p> <p>As you know, the Department of Energy filed the Yucca Mountain license application in June 2008, and it is now undergoing review by the NRC Staff. Licensing proceedings are also underway. In this</p>	<p><a href="#">William D Peterson, 300-year spent nuclear fuel permanent disposal solution Third Party License Appellant Applicant</a></p> <p>MEMORANDUM In a July 9, 2004 Court Order in Case No. 01-1258 before the United States Court of Appeals for the District of Columbia Circuit it is ordered that the U.S. Congress views U.S. Environmental Protection Agency (EPA) standards as a basic prerequisite for developing spent nuclear fuel storage and disposal. The National Academies of Sciences is to provide recommendations. EPA's standards are to be "based upon and consistent with" NAS's findings and recommendations, or EPA is to return to Congress and seek legislative authority to deviate from NAS's reports...</p>	<p><a href="#">Letter to Chairman Jaczko from Martin Malsch (State of Nevada) responding to NEI's letter</a></p> <p>Late Friday afternoon, November 13, 2009, the Nuclear Energy Institute (NEI), one of the intervening parties to the highly contested adjudicatory proceeding on the U.S. Department of Energy's (DOE's) license application for a construction authorization for the proposed Yucca Mountain high-level waste repository, wrote to you and the other Commissioners requesting that the adjudicatory proceeding required for DOE's application be suspended. NEI's request, which would deny other intervening parties to this first-of-a-kind proceeding their right under Section 114(d) of the Nuclear Waste Policy Act, Section 189 of the Atomic Energy Act, and 10 C.F.R. § 2.310(f) to a full, fair, and timely on-the-record hearing, is a thinly disguised motion since it seeks to abrogate the entire regulatory scheme for the licensing proceeding. As such, it suffers from numerous defects that should preclude the</p>

	<p>regard, legal issues raised by contentions are being briefed, and discovery has begun. Briefing should be complete next year; discovery - including the taking of numerous depositions - is scheduled to continue throughout most of 2010. If the adjudicatory proceedings continue as currently planned, hearings would likely begin sometime during the first part of 2011. However, because circumstances related to DOE's pursuit of the Yucca Mountain application are expected to change significantly in the very near term, the Commission should take immediate action to conserve and more immediately target its and stakeholders' resources now being expended on the licensing proceeding....</p>		<p>Commission from giving it any consideration. Among other things, NEI's request:</p>
--	---	--	--