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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01-PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

THIRD CASE MANAGEMENT ORDER

I. DEFINITIONS

For purposes of this Third Case Management Order, the following definitions shall apply:

A. "DOE" means the United States Department of Energy, which includes the Naval Nuclear Propulsion Program.

B. "Document" means any written, printed, recorded, magnetic or graphic matter or material regardless of form or characteristic that contains "documentary material" as that term is defined in 10 C.F.R. § 2.1001.

C. "Information protection requirements" refers to the controls or systems that a requester must have in place to possess sensitive unclassified information and prevent its unauthorized dissemination.

D. "Naval Nuclear Propulsion Information" or "NNPI" concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of the naval nuclear powered ships or prototypes, including the associated nuclear support facilities. NNPI is created and controlled by the Naval Nuclear Propulsion Program. The disclosure of NNPI is governed by 42 U.S.C. § 7158, 50 U.S.C. § 2406, 10 U.S.C. § 130, Executive Order No. 12344, and 15 C.F.R. Parts,

734, 744, and 774., 22 C.F.R. Part 120, and 32 C.F.R. Part 250. The unauthorized disclosure of NNPI may result in the imposition of civil and criminal penalties.

E. "Official Use Only information" or "OUO information" for purposes of this Third Case Management Order refers to DOE information that may be protected from disclosure under Freedom of Information Act (5 U.S.C. § 552(b)) Exemptions 2 and 3. Information protected from disclosure as OUO information under Exemption 2 is information predominantly internal to DOE, the disclosure of which would risk circumvention of applicable law or render the documents operationally useless, and includes: critical infrastructure information; vulnerability assessments; inspection guidelines; classification guidelines; and evaluations of critical nuclear systems, facilities, stockpiles and other similar assets. Information protected from disclosure by statute as OUO information under Exemption 3 includes export controlled information whose unrestricted public dissemination could assist proliferants or potential adversaries of the United States. As used in this Third Case Management Order, OUO information does not include Safeguards Information, NNPI, or Unclassified Controlled Nuclear Information.

F. "Originator" means a potential party that creates and asserts that a document qualifies, in whole or in part, as exempt from inclusion on the LSN in full text format because it contains sensitive unclassified information.

G. "Potential party" means DOE, the NRC Staff, the State of Nevada, and any person or entity that meets the definitions of "party," "potential party," or "interested governmental participant" under 10 C.F.R. § 2.1001.

H. "Receiver" means any person to whom access has been granted to a document that contains sensitive unclassified information pursuant to this Third Case Management Order.

I. "Requester" is any potential party seeking access to an un-redacted document on the LSN that contains sensitive unclassified information pursuant to this Third Case Management Order.

J. "Safeguards Information" or "SGI" is information that is authorized by § 147 of the Atomic Energy Act (AEA) of 1954, as amended, to be protected from inadvertent release and unauthorized disclosure, and that is further governed by 10 C.F.R. Part 73. The unauthorized disclosure of SGI may result in the imposition of civil and criminal penalties under §§ 147, 223, and 234 of the AEA, and applicable regulations.

K. "Sensitive unclassified information" means any SGI, UCNI, NNPI, or OUO information.

L. "Sensitive unclassified information log" means a chart that identifies documents claimed to be protected from disclosure because they contain sensitive unclassified information and, without revealing protected information, establishes that each identified document is entitled to be protected from disclosure on the LSN in full text format.

M. "Technical competence" means demonstrable knowledge, skill, experience, training or education.

N. "Unclassified Controlled Nuclear Information" or "UCNI" is information that is authorized by § 148 of the AEA, as amended, to be protected from inadvertent release and unauthorized disclosure, and that is further governed by 10 C.F.R. Part 1017. The unauthorized disclosure of UCNI may result in the imposition of civil and criminal penalties under §§ 148 and 223 of the AEA and 10 C.F.R. § 1017.18.

II. GENERAL REQUIREMENTS

A. Scope.

Unless indicated otherwise, the requirements of this Third Case Management Order shall apply equally to all potential parties. This Third Case Management Order does not address the procedures to be followed for documents containing primary or secondary privileges, which are addressed in the PAPO Board's Second Case Management Order. The provisions of this Third Case Management Order also do not restrict the use of documents containing sensitive unclassified information received outside this proceeding.[1]

B. Burden of Persuasion

The requester bears the burden of persuasion regarding access to sensitive unclassified information in this proceeding. The originator bears the burden of persuasion that information is entitled to be protected as sensitive unclassified information for those categories of sensitive unclassified information over which the PAPO Board, another Presiding Officer in this proceeding, and the Commission has authority.

C. Designation of Point of Contact.

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[1] The provisions of this Third Case Management Order do not apply to NRC staff, counsel, consultants, and contractors with respect to sensitive unclassified information that the NRC is entitled to receive apart from its role as a litigant in this proceeding (*e.g.*, information available to, or required to be submitted to, the NRC by statute, regulation, or license condition or information submitted to the NRC in support of a requested licensing action). Such information is subject to internal NRC requirements governing the treatment of protected sensitive information. *See* NRC Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program." The provisions of this Third Case Management Order do apply to NRC staff, counsel, consultants, and contractors with respect to sensitive unclassified information that NRC would not be entitled to receive except by virtue of an Order in this proceeding. Upon filing a motion with the PAPO Board, another Presiding Officer in this proceeding, or the Commission, the provisions of this Third Case Management Order are subject to such modifications as may be necessary to conform to revisions to 10 C.F.R. Part 73 following notice and comment. The provisions of this Protective Order also do not apply to DOE staff, counsel, consultants, and contractors with respect to sensitive unclassified information in this proceeding because such information is otherwise subject to protection pursuant to its internal DOE Orders. *See* DOE Order 471.1A (Identification and Protection of Unclassified Controlled Nuclear Information) (Approved June 30, 2000); DOE Order 471.3 (Identifying and Protecting Official Use Only Information) (Approved April 9, 2003); DOE Order 471.2A (Information Security Program) (Approved March 27, 1997).

Each potential party certifying an LSN document collection pursuant to 10 C.F.R. § 2.1009(b) shall file a notice identifying the person who will serve as its primary point of contact (POC) for purposes of requests for documents with sensitive unclassified information and the pre-motion consultations required under 10 C.F.R. § 2.323(b) and this Third Case Management Order. The notice shall include the name, address, email address, and office phone number of the POC. All potential parties are encouraged to designate at least one alternate POC. The POC, or alternate POC, should generally be available for consultation between the hours of 9:00 a.m. and 5:00 p.m. in the time zone in which the principal office or residence of the POC is located. The LSN Administrator (LSNA) shall prominently post a list of the POCs on the LSN. Each potential party shall file such notice at the time they certify their document collection.

D. No Subject Matter Waiver.

A potential party's production of a document that contains sensitive unclassified information, even if intentional, shall not cause a subject-matter waiver with respect to that potential party's other documents that contain sensitive unclassified information. A potential party shall not be permitted to compel the production of another potential party's documents on the ground that its production will not affect a subject-matter waiver regarding other documents that contain sensitive unclassified information.

E. Re-claiming Documents that Contain Sensitive Unclassified Information.

A potential party that inadvertently produces sensitive unclassified information will be permitted to take appropriate steps to protect the sensitive unclassified information from further unauthorized dissemination, including working with the LSNA to promptly remove a document from the LSN and reclaiming a document inadvertently produced to potential parties. The potential party re-claiming the inadvertent production of sensitive unclassified information will

provide notice as soon as practicable to the PAPO Board and other potential parties of the steps taken to protect the sensitive unclassified information from further unauthorized dissemination.

F. Withdrawal of Sensitive Unclassified Information Protection.

A potential party that withdraws its claim that a document requires the sensitive unclassified information protection shall, within three (3) business days or as soon thereafter as practicable, make all necessary corrections to its LSN document collection.

G. Good Faith Consultation.

In order to maximize the early resolution of issues without PAPO Board intervention, motions will be summarily rejected if they are not preceded by a sincere attempt to resolve the issues and include the certification specified in 10 C.F.R. § 2.323(b). Each potential party shall make itself available on a timely basis for consultation and shall cooperate in attempting to resolve the issues. Without revealing the substance of any settlement discussions, the required certification shall state if the other potential party was not available or refused to discuss the matter.

H. Stipulations.

The right to and terms of access to sensitive unclassified information pursuant to this Third Case Management Order may be stipulated by written agreement among the relevant potential parties, and the stipulation will be filed with the PAPO Board, another Presiding Officer in this proceeding, or the Commission.

I. Accounting Records.

Receivers shall keep a record of all un-redacted documents containing sensitive unclassified information that they receive pursuant to this Third Case Management Order. Every six months for as long as it possesses such documents, each potential party shall file with the PAPO Board and serve on the originator from whom access has been granted an accounting of

the un-redacted documents that contain sensitive unclassified information that the potential party and all other receivers under its control has received under this Third Case Management Order, including the LSN Accession number of each document and the persons given access to such information during the preceding six months. The accounting shall be filed and served via the EIE. The PAPO Board, with the assistance of originators, will keep a master list of receivers who have been granted access to un-redacted documents containing sensitive unclassified information.

J. Inadvertent Public Release.

Inadvertent public release of information designated as sensitive unclassified information, regardless of when such release occurs, does not relieve anyone from complying with this Third Case Management Order. Information formerly designated as sensitive unclassified information that is properly disclosed in the public record of this proceeding is no longer subject to this Third Case Management Order.

K. Timely Completion of Pre-License Application Phase Document Discovery

In the interest of completing pre-license application phase document discovery in a timely manner, the procedures prescribed in this Third Case Management Order are without prejudice to a potential party's right to move, for good cause, to cut off another potential party's right to pursue privilege claims or prevent the dissemination of sensitive unclassified information. A potential party should pursue its requests for access to sensitive unclassified information, and any challenge to determinations regarding access to sensitive unclassified information, over the pre-license application period consistent with this Third Case Management Order and should avoid delaying and raising such challenges at the end of the period. Except as provided herein, the time period in 10 C.F.R § 2.323(a) is inapplicable to challenges during pre-license application phase document discovery.

L. Filings and Service via the NRC's Adjudicatory EIE System.

All potential parties should note, however, that not all of the required steps in the various procedures set forth in this Third Case Management Order require filing and service via the EIE. For example, a potential party's request for access to sensitive unclassified information may be submitted by email, if appropriate, directly to the originator's POC and should not be filed and served via the EIE. Similarly, the response to such a request may be submitted by email directly to the requester and should not be filed and served via the EIE. As used herein, the term "submit" denotes an action that is not filed and served via the EIE. On the other hand, a requester's motion must be filed and served via the EIE, as does a response to such a motion. As used herein, the term "file" denotes an action that is filed and served via the EIE.

III. REDACTION OF SENSITIVE UNCLASSIFIED INFORMATION

A. Requirement to Produce Redacted Versions.

1. Each originator that withholds a document on the ground that it contains sensitive unclassified information shall make an electronic redacted version of the document available on the LSN, with an appropriate bibliographic header, to the extent the sensitive unclassified information can reasonably be segregated from the non-sensitive unclassified information. The bibliographic header for the redacted document shall cross-reference the bibliographic header for the un-redacted document. The redacted version shall be a separate document on the LSN.

2. Unless otherwise ordered by the PAPO Board, another Presiding Officer in this proceeding, or the Commission, an originator need not make an electronic redacted version of a document available on the LSN if the document is also subject to a claim of primary privilege as defined in the Second Case Management Order.

3. The amount of information deleted shall be fully and accurately indicated in the redacted version of the document. *See* 10 C.F.R. § 9.19.

B. Producing Redacted Versions of Documents by DOE.

DOE shall make a redacted version of each document from its current document collection that is protected as sensitive unclassified information available on the LSN, with the appropriate bibliographic header. To the extent practicable, DOE will make these documents available on the LSN at the time of initial certification to the extent the redacted documents have not already been made available. During the course of this proceeding, if DOE creates new documents that contain sensitive unclassified information, DOE will promptly make redacted versions of those documents available on the LSN.

C. Producing Redacted Versions of Documents by Other Federal Agencies.

All other federal agencies originating sensitive unclassified information subject to this Third Case Management Order shall make a redacted version of each document that contains sensitive unclassified information available on the LSN, with an appropriate bibliographic header, within seven (7) days of the date prescribed by 10 C.F.R. §§ 2.1003 and 2.1009 for their initial certification. During the course of this proceeding, federal agencies originating sensitive unclassified information subject to this Third Case Management Order may also create new documents that contain sensitive unclassified information, and they will promptly produce redacted versions of those documents on the LSN.

IV. ACCESS REQUIREMENTS FOR UN-REDACTED DOCUMENTS THAT CONTAIN SENSITIVE UNCLASSIFIED INFORMATION

Only requesters who agree to comply with this Third Case Management Order and the appropriate Protective Orders in Appendices A through D, and who have executed and filed with the originator and PAPO Board the attached Non-Disclosure Affidavit may have access to

sensitive unclassified information. Access requirements for each category of sensitive unclassified information are set forth below.

A. SGI.

1. Access to SGI must conform to the requirements in 10 C.F.R. Part 73 and is subject to the following conditions.

a. Access shall be granted to only those portions of documents designated as containing SGI that are both relevant to and necessary for the preparation of contentions and conduct of this proceeding.

b. A potential party shall have established a need to know for the SGI[2] defined as a determination by the participant originating the SGI that the proposed recipient's access to the SGI is necessary in the performance of official, contractual, or employment duties with respect to the conduct of this proceeding.[3] In support of this determination:

(1) A potential party must file a brief statement with the originator of the SGI[4] or holder of the SGI from whom SGI is sought, indicating why the potential party's possession of SGI is necessary[5] to the potential party's formulation of a contention(s) for a licensing hearing. As part of this statement, the potential party must indicate: (i) the nature of

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[2] The NRC Staff will make a determination of need to know when it is in sole possession of an SGI document or when that document is held by parties in addition to the NRC Staff. In cases where the NRC staff is in possession of an SGI document originated by another party, the NRC Staff will consult with the originator of the SGI prior to making a need to know determination. In all other cases, a determination of need to know shall be made by the originator of the SGI.

[3] *See* 10 C.F.R. § 73.2.

[4] If the statement is filed with a holder of SGI who is not the originator, pursuant to footnote 2, the holder shall consult with the originator prior to making a need to know determination.

[5] Necessary in this context means an actual and specific need for the SGI at the time that it is requested.

the potential party's general interest in the proceeding including how the potential party would be adversely affected by the licensing action for the high-level waste repository[6]; and (ii) the potential party's technical competence, to evaluate the specific information requested.

(2) A potential party through its representative, counsel, consultants or assistants must demonstrate the technical competence necessary to evaluate the SGI requested by the potential party. Where the potential party obtains the services of an individual with the requisite technical competence, a potential party's counsel or assistants working with that individual need not independently demonstrate the technical competence necessary to evaluate the requested SGI.[7]

c. Any individual seeking access to SGI must be determined to be trustworthy and reliable based upon voluntary submission of a standard fingerprint form SF-87 to the NRC Staff to be used in conducting a fingerprint criminal history background check. The SF-87 is available on request from the NRC Staff[8] in addition to local law enforcement agencies. The form should be mailed to the NRC with the information requested in section V of this Order and a $27 processing fee.[9] In lieu of a fingerprint background check, requesters of SGI must provide to the NRC Staff sufficient information for the Staff to conduct an alternate background

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[6] The State of Nevada, affected units of local government and affected Indian tribes are presumed to have a general interest in this proceeding.

[7] If qualifications concerning technical competence necessary to evaluate SGI are challenged, the requester must demonstrate that the individual seeking access to SGI is qualified to evaluate each section of the SGI to be reviewed.

[8] Requests for forms should be mailed to: Office of Administration, Security Processing Unit, Mail Stop T6E46, Nuclear Regulatory Commission, Washington, D.C. 20555-00012.

[9] Office of Administration, Security Processing Unit, Mail Stop T6E46, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-00012. Payable by check or money-order made out to the Nuclear Regulatory Commission.

check[10] to determine trustworthiness and reliability. Information required to be provided to the NRC Staff for the alternate background check shall be submitted on standard form SF-85.[11] The requested information should be mailed to the NRC along with the information requested in section V of this Order and a $345.75 processing fee.[12]

d. The requirements in section IV.1.c of this Case Management Order do not apply to NRC Staff, counsel, consultants and contractors, DOE personnel, and individuals designated by a Governor of a State as representatives of that State.

e. Access to SGI by potential parties, and counsel, consultants, assistants and others representing a potential party, shall be conditioned on that they shall use it solely for the purpose of participation in this proceeding before the PAPO Board, another Presiding Officer in matters directly pertaining to this proceeding, or in any further Commission or judicial proceedings in this case.

f. Potential parties, and counsel, consultants, assistants and others representing a potential party, who receive any access to SGI (including transcripts of *in camera* hearings, filed testimony, or any other document that reveals SGI) shall maintain its confidentiality as required by this Case Management Order, attached Protective Order and the

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[10] A background check must be sufficient to support the trustworthiness and reliability determination in order that the NRC Staff performing the check and the PAPO Board, another Presiding Officer in this proceeding, or the Commission have assurance that granting the individual access to SGI does not constitute an unreasonable risk to the public health and safety or the common defense and security.

[11] Available at www.opm.gov/Forms/html/sf.asp or by mail from the Office of Administration, Security Processing Unit, Mail Stop T6E46, Nuclear Regulatory Commission, Washington, D.C. 20555-00012. The alternate background check shall include a credit check.

[12] Office of Administration, Security Processing Unit, Mail Stop T6E46, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-00012. Payable by check or money-order made out to the Nuclear Regulatory Commission.

attached Non-Disclosure Affidavit (the terms of which are hereby incorporated in this Case Management Order).

B. NNPI.

Access to specific documents that contain NNPI will be granted once the requester has established (i) a need to know the NNPI and (ii) that the requester is a United States citizen.

1. For purposes of access to NNPI under this Third Case Management Order, a requester has a "need to know" if it: (a) submits to the jurisdiction of the PAPO Board, another Presiding Officer in this proceeding, or the Commission; (b) states that it will use NNPI solely for the purpose of participating in any Commission proceeding concerning a license application for a geologic repository at Yucca Mountain or any appeal to a federal court from such proceeding; (c) identifies the documents by a LSN Accession number and the particular subject of inquiry for which the NNPI is sought; and (d) a statement that the requester shall abide by this Third Case Management Order.

2. For purposes of access to NNPI, a "United States citizen" is any United States national who does not represent a foreign government, foreign private interest, or foreign national on any matter in this proceeding. The term "United States citizen" does not include immigrant aliens. A requester may seek a waiver of this requirement by submitting an application to the POC at the Naval Nuclear Propulsion Program. Such waivers can only be granted by the Chief of Naval Operations.

C. OUO Information.

Access to specific documents that contain OUO information will be granted once the requester has established a need to know the OUO information. For purposes of access to OUO information under this Third Case Management Order, a requester has a "need to know" if it: (1) submits to the jurisdiction of the PAPO Board, another Presiding Officer in this proceeding, or

the Commission; (2) states that it will use OUO information solely for the purpose of participating in any Commission proceeding concerning a license application for a geologic repository at Yucca Mountain or any appeal to a federal court from such proceeding; and (3) identifies the documents by a LSN Accession number and the particular subject of inquiry for which OUO information is sought. To the extent that the OUO information is also export controlled information, access to such information must be in accordance with § 57b of the AEA and 10 C.F.R. Part 810.

D. UCNI.

Access to specific documents that contain UCNI under this Third Case Management Order will be granted pursuant to the "special access" provisions of 10 C.F.R. § 1017.16. A requester must submit a request that includes: (1) the name, current residence or business address, birthplace, birthdate, and country of citizenship of the person submitting the request; (2) a LSN Accession number of the document that contains the UCNI requested; (3) a description of the purpose for which the UCNI is needed; and (4) a statement that the requester shall abide by this Third Case Management Order. Nothing in this Third Case Management Order will prevent a potential party from receiving access to UCNI under the "routine access" provisions of 10 C.F.R. § 1017.16.

V. PROCESS FOR REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED INFORMATION

A potential party may request full-text access to specific documents containing sensitive unclassified information from the originator of such document as set forth below.

A. Requests

Requests for documents containing sensitive unclassified information shall be made pursuant to 10 C.F.R. § 2.1018(a)(1)(iii). All requests under this Third Case Management Order

for SGI, OUO information, and UCNI shall be submitted electronically to the email address of the appropriate POC posted on the LSN for the potential party whose document collection contains the requested document. All requests under this Third Case Management Order for NNPI shall be submitted via U.S. mail, return receipt requested, to the address of the appropriate POC posted on the LSN for the Naval Nuclear Propulsion Program. All document requests shall contain the information set forth below.

1. The requester's name; address; telephone number; email address; and a statement that the sender of the electronic document is deemed the signer of the document, and consents to comply with the regulations set forth in 10 C.F.R Part 2 and all orders of the PAPO Board, another Presiding Officer in this proceeding, or the Commission concerning access to and protection of sensitive unclassified information.

2. The requester shall identify if access is sought for an entire document or the information that is redacted from a document.

3. The request shall also provide the requisite information for each category of sensitive unclassified information identified in Part IV above for which the requester seeks access to allow an originator to make an access determination.

4. Failure of a requester to submit the request to the posted email or mailing address, as appropriate, of the appropriate POC and to include the required information shall constitute sufficient grounds for denial of the request.

B. Response to Requests.

Within ten (10) business days of receiving a request for access to NNPI, OUO information or UCNI, the originator of the requested document shall either (1) grant access subject to this Third Case Management Order and upon the execution and filing by the requester of the Non-Disclosure Affidavit attached at Appendix E, (2) submit to the requester a denial that

fully justifies and explains, without revealing the sensitive unclassified information, the reasons for the denial, or (3) indicate that the originator continues to process the request for access and provide an estimated time for making a determination on the request.

Within twenty (20) business days of receiving a request for access, the originator of the requested SGI document shall either: (1) submit to the requester a denial that fully justifies and explains the denial based on a failure to show an adequate need to know; or (2) notify the requester that an adequate need to know has been shown and that either fingerprint forms or information required for an alternate background check pursuant to section IV.A.1.c of this Order will need to be provided to the NRC Staff in order for a final determination of SGI access to be made. Within forty (40) business days of receiving the supporting information requested above, the SGI originator will either: (1) grant access to the requester; (2) submit to the requester a denial that fully justifies and explains, without revealing the sensitive unclassified information, the reasons for the denial; or (3) indicate that the originator continues to process the request and provides an estimated time of completion.[13]

C. Process for Resolving Disputes Concerning Sensitive Unclassified Information.

1. If a requester disagrees with the reasons denying it access to sensitive unclassified information or contends that a decision on whether to grant access has been unreasonably delayed, the requester may file a motion consistent with 10 C.F.R. §§ 2.323, 2.705, and 2.1010.

2. As provided in Part II.G., prior to filing any motion, the requester must in good faith confer with the POC of the originator. The good faith discussion shall include: (a) a

[13] A requester may expedite the clearance process by submitting the fingerprint or alternative background check forms concurrently with the request for SGI.

disclosure by the originator as to whether, during the proceeding, it has previously provided access to the document (or parts of the document) at issue to another potential party; (b) the submission by the originator of an entry for the particular document on a sensitive unclassified information log (the form of which is described in Appendix F to this Third Case Management Order); (c) whether the document is subject to other claims of privilege, which may moot a challenge regarding access to the sensitive unclassified information; (d) whether the requester or originator believes that the dispute raises a controlling issue of law; and (e) information provided by the requester that would allow the originator to conclude whether the requester can meet the access or information protection requirements for sensitive unclassified information. The certification by the requester shall specify the results of the discussion of these issues.

3. Within seven (7) business days after such written motion has been filed, the originator (and no other potential party except as provided below) may file as a matter of right a response to the motion, along with any supporting affidavits or other accompanying evidence. Submission of supporting affidavits or other accompanying evidence that contain sensitive unclassified information must be submitted *in camera* to the PAPO Board, another Presiding Officer in this proceeding, or the Commission. In those circumstances in which more than one federal agency could be considered a dual holder of a document containing sensitive unclassified information, each such federal agency may file a response to the motion. The response to the motion may also address whether the PAPO Board, another Presiding Officer in this proceeding, or the Commission has authority to fully and finally resolve the issues in question.

4. The requester shall have no right of reply, except as permitted by the PAPO Board, another Presiding Officer in this proceeding, or the Commission pursuant to 10 C.F.R. § 2.323(c).

D. Form and Format of Sensitive Unclassified Information Logs.

Each entry for a document on a sensitive unclassified information log under this Third Case Management Order shall set forth the elements specified in Appendix F. The information filed shall be arrayed in a columnar format corresponding to the elements identified in the Appendix. The log shall be filed via NRC's EIE process in PDF format as specified in the EIE Guidance Document. The log will be available to potential parties via the NRC's Electronic Hearing Docket.

Concurrent with any such filing, parties shall submit the electronic file used to generate the log to the LSN Administrator.

VI. INFORMATION PROTECTION REQUIREMENTS

Upon receiving access to sensitive unclassified information, receivers must prevent the unauthorized dissemination of and consider whether they can possess such information. The originator will be available to provide advice and information that will assist the receiver in implementing any or all of the information protection requirements described herein and in Appendices A through D. If after consultation with the originator a receiver is unable to comply with all of those requirements or the originator and receiver otherwise agree that access should be had at the originator's premises in lieu of possession, the originator will make sensitive unclassified information available, upon reasonable notice, for inspection to a receiver at the originator's premises.

Specific information protection requirements for each category of sensitive unclassified information are set forth in the appropriate Protective Orders found at Appendices A through D

of this Third Case Management Order: SGI (Appendix A); NNPI (Appendix B); OUO information (Appendix C); and UCNI (Appendix D). The general information protection requirements for sensitive unclassified information are set forth below.

A. General Information Protection Requirements Applicable to All Categories of Sensitive Unclassified Information.

1. After receiving an un-redacted version of a specific document that contains sensitive unclassified information, a receiver may provide that document to other persons who (a) have been authorized to access and possess such information under this Third Case Management Order, and (b) have executed and filed the Non-Disclosure Affidavit. Sensitive unclassified information received pursuant to this Third Case Management Order shall only be used, and its disclosure shall be reasonably limited to those authorized to receive such information, as required for the conduct of any Commission proceeding concerning a license application for a geologic repository at Yucca Mountain or any appeal to a federal court from such proceeding.

2. Receivers of sensitive unclassified information subject to this Third Case Management Order may take notes on such information. If such notes contain sensitive unclassified information, they must be marked and protected to the same extent as the original sensitive unclassified information. Receivers of sensitive unclassified information subject to this Third Case Management Order may make copies of such information to the extent provided in Appendices A through D for the particular category of sensitive unclassified information.

3. If a receiver has reason to suspect that a document containing sensitive unclassified information may have been lost or misplaced, or that it has otherwise become available to unauthorized persons, then the receiver shall promptly notify the PAPO Board, or

another Presiding Officer in this proceeding, and the originator of the sensitive unclassified information, of those suspicions and the reasons for them.

4. Any pleading or other filing (including testimony) that contains sensitive unclassified information shall be:

a. Marked in accordance with the applicable marking requirements identified in Appendices A through D for the particular category of sensitive unclassified information;

b. Submitted and transmitted in accordance with the applicable transmission by mail requirements identified in Appendices A through D for the particular category of sensitive unclassified information;

c. Served only on the NRC Office of the Secretary (the NRC Office of the Secretary receives the original), other potential parties and counsel identified on the master list referenced in Part II.I who have been granted access and possession under this Third Case Management Order to the specific sensitive unclassified information contained in the pleading or filing, and the individual members of the PAPO Board, another Presiding Officer in this proceeding, or the Commission, as appropriate; and

d. Accompanied by a cover letter or memorandum that will be filed via the EIE, and that briefly describes the contents of the pleading or other filing without revealing the sensitive unclassified information.

VII. MISCELLANEOUS

A. Reservation of Rights

Nothing in this Third Case Management Order, or any appendices attached hereto, shall preclude:

1. Any potential party from objecting to the introduction or use of sensitive unclassified information in this proceeding;

2. Any potential party from seeking public disclosure of sensitive unclassified information in accordance with applicable regulatory procedures; and

3. The appropriate federal agency having cognizance over the sensitive unclassified information from finding in the course of this proceeding that all or part of previously-designated sensitive unclassified information need no longer be protected. A potential party may request that the appropriate federal agency make such a determination, and the filing of such a request does not preclude a challenge that the particular federal agency does not have authority to make that determination. If the appropriate federal agency makes such a finding, the sensitive unclassified information shall nevertheless be subject to this Third Case Management Order for ten (10) business days from the date of issuance of the decision. If a potential party seeks continued protection under this Third Case Management Order and requests that the issue be certified to or files an interlocutory appeal with an appropriate forum, this Third Case Management Order shall apply until the issue has been resolved.

4. Any potential party from requesting that the Commission order the disclosure of sensitive unclassified information over the objection of the originator.

5. Any federal agency from arguing that neither the PAPO Board, another Presiding Officer in this proceeding, nor the Commission has the authority to override the originator's determination that a document contains sensitive unclassified information.

B. Availability of Sensitive Unclassified Information

Sensitive unclassified information shall remain available to receivers until the later of the date that an order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding relating to the sensitive unclassified information is

concluded and no longer subject to judicial review. Absent further order, the receiver shall, within fifteen (15) days of the later date described above, return the sensitive unclassified information to the originator, or shall destroy the information in accordance with the destruction requirements for that category of sensitive unclassified information discussed in Appendices A through D, as appropriate. Within the 15-day period, each receiver shall also submit to the originator an affidavit stating that, to the best of its knowledge, all sensitive unclassified information, copies of such information (in accordance with the requirements set forth in Appendices A through D for the particular category of sensitive unclassified information), and all notes of such information have been returned or have been destroyed by methods that assure complete destruction in accordance with this Third Case Management Order.

C. Receiver No Longer Uses or Qualified to Access Sensitive Unclassified Information.

If a receiver that has received documents containing sensitive unclassified information under this Third Case Management Order no longer uses such information or qualifies as a receiver or potential party, or if an individual serving as counsel, consultant, other representative, or assistant no longer qualifies as such, then within fifteen (15) days, such receiver or individual shall return or destroy the documents containing sensitive unclassified information in accordance with this Third Case Management Order and submit an affidavit that it has done so.

D. No Tolling of Time Periods

All potential parties should note that the pendency of a challenge to DOE's certification of its LSN document collection will not stay any other potential party's time for complying with the requirements of 10 C.F.R. §§ 2.1003(a) and 2.1009, or automatically toll the time in which potential parties have to complete discovery. *See* 10 C.F.R. § 2.342; *see also* 10 C.F.R. § 2.1015(e).

E. Violations of Third Case Management Order

Any violation of the terms of this Third Case Management Order or a Non-Disclosure Affidavit executed in furtherance of this Third Case Management Order may result in the imposition of sanctions as the PAPO Board, another presiding officer in this proceeding, or the Commission may deem appropriate. Such sanctions may include, but are not limited to: (1) refusal to consider a filing by the offending receiver; (2) denial of the right to receive documents under this Third Case Management Order; (3) denial of the right to cross-examine or present evidence; (4) refusal to allow the receiver, or counsel, consultant, or other representative of a receiver to participate in this proceeding; (5) dismissal of one or more of a receiver's contentions; or (6) dismissal of the receiver from the proceeding. In addition, sanctions may include, and are not limited to, an originator: (1) referring the violation to appropriate bar associations and/or other disciplinary authorities; (2) referring the violation to the U.S. Department of Justice for criminal prosecution, if appropriate; (3) imposing civil penalties as authorized by applicable law; and (4) denying access to sensitive unclassified information.

F. Controlling Issues

If the PAPO Board, another Presiding Officer in this proceeding, or the Commission concludes that a dispute presents a controlling issue of law that may have broad or general relevance to the discovery process, additional briefing may be requested of the requester, receiver, originator, or other potential parties.

G. Motion for Reconsideration.

Any motion for reconsideration of this Third Case Management Order shall be filed by [DATE]. Answers to any such motion shall be filed by [DATE].

H. Alterations to Third Case Management Order

The PAPO Board, another Presiding Officer in this proceeding, or the Commission may alter or amend this third Case Management Order as circumstances warrant at any time during the course of this proceeding. The potential parties shall be afforded notice and an opportunity to be heard before any such alterations or amendment comes into effect.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

_____

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[date]

Appendix A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01-PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

Protective Order
(Safeguards Information)

A. This protective order governs the protection of SGI information contained in the specific portions of documents that a potential party is permitted access to after fulfilling the requirements of sections IV.A and V of the appended Case Management Order. After being granted access to SGI material, a potential party must comply with the information protection standards in section VI of the Case Management Order and the following requirements.

1. Potential parties and counsel, consultants, assistants and others representing a potential party, shall be permitted to handle SGI only if they have an approved, documented plan to establish, implement and maintain an information protection system, including cyber security. Such plan must include the requirements in 10 C.F.R. § 73.21(d)-(h) for controlling SGI while in use or in storage.[1]

2. Use of SGI will be made only: (i) at a facility provided for use by a designated potential party or counsel; (ii) in a designated office of the potential party; or

[1] A recipient's information protection systems will be subject to an on-site inspection by NRC Staff prior to receipt of SGI information.

(iii) in the NRC headquarters in Rockville, Maryland. Any such facility is to be located in a controlled access building that is either attended 24 hours a day or locked while unattended.[2]

3. When not under the possessor's direct control or the direct control of another individual authorized to have access thereto, all documents containing SGI must be stored in a locked security storage container as defined in 10 C.F.R. § 73.2 that is in a location identified in paragraph 2 of this Protective Order. Access to the security storage container will be positively controlled by use of keys or other comparable means. Keys and knowledge of lock combinations safeguarding SGI shall be limited to persons authorized access to the SGI stored within the security storage container in accordance with 10 C.F.R. § 73.21(d)(1).

4. Any administrative support work performed at the request of a possessor of SGI or under their supervision in this proceeding, or further proceedings, must be performed only at the above location(s) by personnel who have executed a Non-Disclosure Affidavit, which shall be filed promptly with the originator of the document and the PAPO Board, another Presiding Officer in this proceeding, or the Commission upon execution.

5. SGI shall not be discussed by telephone or communicated by email or facsimile transmission unless the SGI is transmitted through the use of an encryption system that the National Institute of Standards and Technology has validated as conforming either to Federal Information Processing Standard 140-1 or to Federal

[2] *See* 10 C.F.R. § 73.2 (definition of "Security Storage Container").

Information Processing Standard 140-2, or as otherwise acceptable to the NRC Staff pursuant to 10 C.F.R. § 73.21(g)(3).

6. In accordance with 10 C.F.R. § 73.21(h), if SGI is processed on or with automated data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored SGI. If use of an entry code is not feasible, SGI may be processed on, but shall not be stored in, such equipment. If any SGI is backed-up or stored on a computer hard drive or other device, that drive or device shall be removed and stored in the security storage container referred to in paragraph 3 of this Protective Order when not in use.[3] Additionally, any such word processing equipment, data processing equipment, or computer that is used to process or store SGI shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network or Wide Area Network or other data-sharing system.

7. Each document that has been determined to contain SGI shall be marked "Safeguards Information" in a conspicuous manner as set forth in 10 C.F.R. § 73.21(e).

B. In addition to the requirements in section VI.A.2 of the Case Management Order, the following requirements will apply with respect to notes from, and copies of SGI material. Documents containing SGI may only be reproduced or copied to the minimum extent necessary[4] and in accordance with the following provisions. All reproductions or copies of documents containing SGI will be enumerated and shall also note the total number of reproductions or copies that have been created. There shall be a limit of two transcripts per participant for any proceeding conducted on the record in which SGI is

[3] *See* NRC Management Directive 12.5.

[4] *See* 10 C.F.R. § 73.21(f)(1).

disclosed or discussed. Potential parties, and counsel, consultants, assistants and others representing a participant, shall not reproduce or photocopy these transcripts without the express prior approval of the PAPO Board, another Presiding Officer in this proceeding, or the Commission. Notes from, and copies of SGI material will not be included in the NRC Agency Document Access and Management System (ADAMS) or the LSN.[5]

C. All pleadings and correspondence (including testimony) in this proceeding that contain SGI shall be filed in accordance with the following procedures—

1. Appropriately marked designating that the document contains SGI;

2. Submitted only on a 3.5-inch diskette or CD-ROM produced, marked, and transmitted in accordance with the requirements of this Protective Order and Non-Disclosure Affidavit appended to the Case Management Order;

3. Segregated and served only:

(a) On the NRC Office of the Secretary (the NRC Office of the Secretary receives the original), lead counsel or representative of a participant authorized to receive SGI[6] and the individual members of the PAPO Board, another Presiding Officer in this proceeding, or the Commission;

(b) By (1) United States first class, registered, express, or certified mail, (2) internal NRC mail, (3) messenger-courier or overnight delivery service (e.g., Federal Express), or (4) personal delivery by an individual who otherwise is authorized access pursuant to 10 C.F.R. § 73.21(g)(2) or an Order issued by the PAPO Board, another Presiding Officer in this proceeding, or the Commission;

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[5] Pursuant to 10 C.F.R. § 2.1003(a)(4), an electronic bibliographic header may be required.

[6] Each recipient will designate a lead counsel or representative who is authorized to receive SGI and has executed a Non-Disclosure Affidavit.

(c) In two sealed envelopes or wrappers, including (1) an outer mailing envelope, and (2) a heavy, opaque inner envelope bearing the name and address of the addressee and the statement "SAFEGUARDS INFORMATION," followed by the statement "TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked. The outer envelope or wrapper will contain the intended recipient's name and address, and will bear no marking or indication that the document within contains SGI; and

4. Accompanied by an attached cover letter or memorandum, which will also be filed on the Electronic Hearing Docket via the NRC's Electronic Information Exchange, that briefly describes the contents of the pleading or correspondence without inclusion of or reference to any SGI.

D. Each person who receives SGI in this proceeding shall promptly confirm, in writing delivered to the participants in this proceeding who provided such SGI, that he or she has received that information. Verification of receipt shall be maintained by the participant to whom verification was delivered.

E. Potential parties subject to this Protective Order shall appoint a designated representative who is responsible for ensuring that persons under their supervision or control comply with this Protective Order.

F. No individual shall be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to SGI pursuant to this Protective Order unless all information protection requirements of this Order have been met.

G. Even if no longer participating in this proceeding, every person who has had access to or received SGI information and executed a Non-Disclosure Affidavit shall

continue to be bound by the provisions of this Protective Order and the Non-Disclosure Affidavit.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

_____
Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[date]

Appendix B

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01-PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

PROTECTIVE ORDER
(Regarding Naval Nuclear Propulsion Information)

This Protective Order governs the specific information protection requirements for NNPI. Notwithstanding any order terminating this pre-license application phase proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Pre-License Application Presiding Officer (PAPO) Board, a subsequent Presiding Officer in this proceeding, or the Commission.

A. Except where otherwise expressly defined in this Appendix, all terms used herein shall have the same meaning and definition as in the Third Case Management Order.

B. Receivers shall prevent the unauthorized disclosure of NNPI as required in the Third Case Management Order and attached Non-Disclosure Affidavit (Appendix E).

C. The originator of documents that contain NNPI, and any person who makes notes derived from NNPI, shall mark the documents with the word NOFORN at the top and bottom of each page. Documents originated in the course of work that reproduce, expand or modify NNPI shall be marked and controlled in the same way as the original. Media approved by Naval Nuclear

Propulsion Program must be marked and controlled similar to the markings on the original information. The cover sheet will have the warning statement shown below:

> NOFORN: This document is subject to special export controls and each transmittal may be made only with the prior approval of the Naval Nuclear Propulsion Program.

D. Receivers who receive any NNPI shall take all reasonable precautions necessary to ensure that it is not distributed to unauthorized persons. Reasonable precautions shall include the following information protection requirements:

1. Protection in Use. NNPI must remain in the direct control of the receiver. Reasonable precautions must be taken to prevent unauthorized access to documents containing NNPI by persons who are not receivers under this Third Case Management Order. At no time may NNPI be left unsecured, such as in a home or automobile, unattended in a hotel or motel room, or sent with baggage.

2. Protection in Storage. When not in direct control of a receiver, NNPI must be secured in a locked container (*e.g.*, file cabinet, desk, safe). Access to the container must be such that only receivers can access it and compromise of the container can be visually detected. Containers should have no labels that indicate the contents. If removed from the site, NNPI must remain in the personal possession of a receiver.

3. Reproduction. Receivers are not authorized to make photocopies of NNPI. Additional copies of documents that contain NNPI may be requested from the originator to the minimum extent necessary to carry out a receiver's duties in connection with this proceeding. Copies must be protected in the same manner as originals. Excess material containing NNPI should be destroyed as described below.

4. Destruction. Disposal of documents containing NNPI shall ensure that the information is not easily retrievable (*e.g.*, shredding or burning). Alternatively, documents may be returned to the Naval Nuclear Propulsion Program for disposal.

5. Transmission by Mail. NNPI may be sent within the United States via first class mail in a single opaque envelope that has no markings indicating the nature of the contents.

6. Transmission by Facsimile. NNPI may be faxed using a laser fax machine within the United States provided there is a receiver waiting to collect the document and properly control it. NNPI may not be faxed to facilities outside the United States, including military installations, unless encrypted by Naval Nuclear Propulsion Program approved means.

7. Transmission by Email. NNPI cannot be transmitted via email.

8. Transmission over Voice Circuits. NNPI may be transmitted over voice circuits only to receivers who have also been granted access under this Third Case Management Order.

9. Process on Automated Information Systems. NNPI may not be processed on computers unless approved by the Naval Nuclear Propulsion Program. Personally owned computing systems, including, but not limited to, personal computers, laptops, and Portable Electronic Devices such as Personal Digital Assistants, are not authorized for processing NNPI. Exceptions require the specific approval of the Naval Nuclear Propulsion Program.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

_____

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[date]

Appendix C

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01-PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

PROTECTIVE ORDER
(Regarding OUO Information)

This Protective Order governs the specific information protection requirements for Official Use Only (OUO) information. Notwithstanding any order terminating this pre-license application phase proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Pre-License Application Presiding Officer (PAPO) Board, a subsequent Presiding Officer in this proceeding, or the Commission.

A. Except where otherwise expressly defined in this Appendix, all terms used herein shall have the same meaning and definition as in the Third Case Management Order.

B. Receivers shall prevent the unauthorized disclosure of OUO information as required in the Third Case Management Order and attached Non-Disclosure Affidavit (Appendix E).

C. The originator of a document that contains OUO information, and any person who makes copies or notes derived from OUO information, shall mark it on the front page as "Official Use Only" and identify which FOIA Exemption prevents the document from being disclosed to the public on the LSN. If information qualifies as OUO information because it is export controlled and exempt from disclosure under FOIA Exemption 3, then the document containing such

information shall also be marked "Export Controlled Information" along with the accompanying statement: "Contains technical information whose export is restricted by statute." Each page of a document that contains OUO information must also be marked "OUO" in a conspicuous manner.

D. Receivers who receive any OUO information shall take all reasonable precautions necessary to ensure that it is not distributed to unauthorized persons. Reasonable precautions shall include the following information protection requirements:

1. Protection in Use. Reasonable precautions must be taken to prevent unauthorized access to documents containing OUO information by persons who are not authorized under this Third Case Management Order to receive such information. Receivers should not examine OUO information in public places (*e.g.,* do not read documents that contain OUO information in a public place, such as in a cafeteria or while using public transportation).

2. Protection in Storage. Documents that contain OUO information may be stored in unlocked receptacles such as file cabinets, desks, or bookcases so long as internal building security is provided during off hours (*i.e.,* a building is protected by security personnel after the close of normal business hours). When such internal building security is not provided, OUO information should be stored in a locked room or office suite, or in a locked receptacle (*e.g.*, a locked file cabinet, desk, bookcase, or briefcase).

3. Reproduction. Documents that contain OUO information may be reproduced without permission of the originator to the minimum extent necessary to carry out a receiver's duties in connection with this proceeding. Copies must be marked and protected in the same manner as originals. Copy machine malfunctions must be cleared, and all paper paths checked

for materials containing OUO information. Excess material containing OUO information should be destroyed as described below.

4. Destruction. A document that contains OUO information must be destroyed using a strip-cut shredder that produces strips no more than ¼-inch wide or by any other means that provides a similar level of destruction. OUO information stored or processed on electronic storage media (*e.g.,* compact disc) or hard drives of electronic media shall also be destroyed. Regarding destruction of OUO information on hard drives, Secure Clean PC software or its equivalent should be used to permanently remove OUO information, or storage media should otherwise be destroyed to ensure that data cannot be retrieved.

5. Transmission by Mail. Use a sealed, opaque envelope or wrapping and mark the envelope or wrapping with the recipient's address, a return address, and the words "TO BE OPENED BY ADDRESSEE ONLY." Any of the following U.S. mail methods may be used: First Class, Express, Certified, or Registered Mail. Any commercial carrier may also be used.

6. Transmission by Facsimile. If encryption is available, OUO information should be protected by encryption whenever possible. If encryption is unavailable, an un-encrypted facsimile transmission must be preceded by a telephone call to the recipient so that he or she can control the document when it is received.

7. Transmission by Email. If encryption is available, OUO information should be protected by encryption whenever possible. If encryption is unavailable, the OUO information, may be included in a word processing file that is protected by a password and attached to the email message. Senders should call recipients with the password so that they can access the file.

8. Transmission over Voice Circuits. If encryption is available, OUO information should be protected by encryption whenever possible. If encryption is unavailable, OUO information may be transmitted over regular voice circuits.

9. Process on Automated Information Systems. An automated information system (AIS) or AIS network must provide methods (*e.g.,* authentication, file access controls, passwords) to prevent unauthorized access to OUO information stored on the AIS.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

_____
Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[date]

Appendix D

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01-PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

PROTECTIVE ORDER
(Regarding UCNI)

This Protective Order governs the specific information protection requirements for UCNI. Notwithstanding any order terminating this pre-license application phase proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Pre-License Application Presiding Officer (PAPO) Board, a subsequent Presiding Officer in this proceeding, or the Commission.

A. Except where otherwise expressly defined in this Appendix, all terms used herein shall have the same meaning and definition as in the Third Case Management Order.

B. Receivers shall prevent the unauthorized disclosure of UCNI as required in the Third Case Management Order and attached Non-Disclosure Affidavit (Appendix E).

C. The originator, and any person who makes copies or notes derived from UCNI, shall mark in a conspicuous manner on the first page of a document or material that contains UCNI with the following notice:

Unclassified Controlled Nuclear Information
Not for Public Dissemination

> Unauthorized dissemination subject to civil and criminal sanctions under section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

The first page and each page thereafter shall be marked as "Unclassified Controlled Nuclear Information" or "UCNI" at the top and bottom of each page.

D. Receivers who receive any UCNI shall take all reasonable precautions necessary to ensure that it is not distributed to unauthorized persons. Reasonable precautions shall include the following information protection requirements:

1. Protection in Use. An individual granted access to UCNI under this Third Case Management Order shall maintain physical control over any document or material containing UCNI that is in use so as to prevent unauthorized access to it. Receivers should not examine UCNI in public places (*e.g.*, do not read documents that contain UCNI in a public place, such as in a cafeteria or while using public transportation).

2. Protection in Storage. When any document or material containing UCNI is not in use, it must be stored in a secured container (*e.g.*, locked desk or file cabinet) or in a location where access is limited (*e.g.*, locked or guarded facility, controlled access facility).

3. Reproduction. UCNI may be reproduced to the minimum extent necessary consistent with the need to carry out official duties in connection with this proceeding without the originator's permission, provided that the reproduced UCNI is marked and protected in the same manner as the original. Copy malfunctions must be cleared and all paper paths checked for UCNI.

4. Destruction. UCNI must be destroyed by using strip cut shredders that result in particles of no more than ¼-inch wide strips. Other methods that provide sufficient destruction (*e.g.*, an intact document buried in an onsite, controlled-access landfill) may also be used with

approval from DOE. UCNI stored or processed on electronic storage media (*e.g.,* compact disc) or hard drives of electronic media shall also be destroyed. Regarding destruction of UCNI on hard drives, Secure Clean PC software or its equivalent should be used to permanently remove UCNI, or storage media should be destroyed to ensure that data cannot be retrieved.

5. Transmission by Mail. UCNI must be packaged to prevent disclosure of the presence of UCNI when transmitted by means that could allow access to UCNI to an individual who is not authorized access to UCNI. The address and return address must be indicated on the outside of the package. A document containing UCNI may be transmitted by: U.S. first class, express, certified, or registered mail; any commercial carrier; or an individual granted access to UCNI under this Third Case Management Order may hand deliver UCNI as long as that individual controls access to the material being transmitted.

6. Transmission over Telecommunications Circuits. UCNI must be protected by encryption when transmitted by telecommunication services, including voice, facsimile, narrative message, communication facilities, and radio communications. Moreover, if UCNI is transmitted over public-switched broadcast communication paths (*e.g.,* Internet), then the information must always be protected by encryption. Transmission using encryption may be accomplished using encryption algorithms that comply with applicable Federal laws, regulations, and standards that address the protection of sensitive unclassified information.

7. Process on Automated Information Systems. The AIS or AIS network must ensure that only individuals authorized access to UCNI can access that information. For example, networks interconnected with a public-switched broadcast network (*e.g,* Internet) must provide methods (*e.g.*, authentication, file access controls, etc.) to ensure that UCNI is protected against unauthorized access.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

_____

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[date]

Appendix E

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01-PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

NON-DISCLOSURE AFFIDAVIT
(Regarding Sensitive Unclassified Information)

Under penalty of perjury, I hereby declare my understanding that access to sensitive unclassified information is provided to me pursuant to the terms and restrictions of the Third Case Management Order, dated **[DATE]**, that I have been given a copy of and have read this Third Case Management Order; and that I agree to be bound by it. I understand that the contents of sensitive unclassified information, as defined in that Third Case Management Order, shall not be disclosed to anyone other than in accordance with that Third Case Management Order. I acknowledge that a violation of this affidavit or the Third Case Management Order, which incorporates the terms of this affidavit, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Pre-License Application Presiding Officer (PAPO) Board, a subsequent Presiding Officer in this proceeding, or the Commission may deem to be appropriate. Such sanctions may include, but are not limited to, refusal to consider a filing by the offending receiver; denial of the right to receive documents under this or any other protective order in this proceeding; denial of the right to cross-examine or present evidence; refusal to allow the counsel, consultant, or other representative of a receiver to

participate in this proceeding; dismissal of one or more of a receiver's contentions; or dismissal of the participant from the proceeding. Sanctions may also include, and are not limited to, referral of the violation to appropriate bar associations and/or other disciplinary authorities, including the U.S. Department of Justice for criminal prosecution, if appropriate, and the imposition of civil penalties as authorized by applicable law.

WHEREFORE, I do solemnly agree to protect such sensitive unclassified information as may be disclosed to me in this Yucca Mountain licensing proceeding, in accordance with the terms of this affidavit.

Name (printed): _____

Title: _____

Representing: _____

Signature: _____

Date: _____

Subscribed and sworn or affirmed before me this ___ day of _____, 200__.

_____
NOTARY PUBLIC

My commission expires on: _____

APPENDIX F
(Sensitive Unclassified Information Log)

Sensitive Unclassified Information Log:

1. LSN header number.
2. The date the document was created.
3. The title of the document.
4. A description of the subject matter of the document without revealing the sensitive unclassified information.
5. A justification, without revealing the sensitive unclassified information, that the information qualifies as sensitive unclassified information.
6. A statement that the document was created and subsequently handled and maintained under procedures or practices that preserved the confidentiality of the document, listing any exceptions.
7. The type of document (*e.g.*, internal memorandum, email, handwritten notes).
8. An identification of all other privileges or protections claimed for the document.