

ATTACHMENT 4

NRC REGULATORY NEGOTIATION -- AMENDMENTS TO 10 CFR PART 2

HOW CAN PARTIES OBTAIN INFORMATION

WHAT INFORMATION CAN PARTIES OBTAIN

WHAT ARE PARTIES' RIGHTS AND OBLIGATIONS REGARDING DISCOVERY

HOW CAN PARTIES OBTAIN INFORMATION

FROM EACH OTHER THROUGH FORMAL DISCOVERY IN LICENSING BOARD HEARING

FROM NRC THROUGH FOIA AND PDR AND PURSUANT TO NWPA

FROM DOE THROUGH FOIA AND PURSUANT TO NWPA

FROM OTHER AGENCIES THROUGH FOIA

DISCOVERY IN LICENSING BOARD HEARINGS (10 CFR PART 2)

DOE SUBMITS APPLICATION

INTERESTED PARTIES MOVE TO INTERVENE

PREHEARING CONFERENCE (10 CFR 2.751)

ADMITS PARTIES

IDENTIFIES CONTESTED ISSUES

RELEVANCE FOR DISCOVERY IS TIED TO CONTESTED
ISSUES--COULD BE NARROWER THAN GENERAL RELEVANCE
FOR LSS

DISCOVERY (10 CFR 2.740-2.744)

TRADITIONAL DISCOVERY PURSUANT TO RULES OF CIVIL
PROCEDURE

ALLOW REQUESTS FOR DOCUMENTS, INTERROGATORIES,
DEPOSITIONS, ADMISSIONS

30 DAYS TO RESPOND TO REQUEST FOR PRODUCTION OF
DOCUMENTS

LICENSING BOARD HAS DISCRETION TO CONTROL, LIMIT
OR ESTABLISH TIMEFRAMES FOR DISCOVERY

OFTEN, DOCUMENTS SUCH AS DRAFTS, HANDWRITTEN NOTES,
ETC., ARE IDENTIFIED DURING DEPOSITIONS--MAY BE
ALTERNATIVE TO PLACING IN LSS

LICENSING BOARD HAS DISCRETION TO IMPOSE SANCTIONS
DISCRETION VERY BROAD
SANCTIONS IMPOSED HAVE BEEN VERY WEAK

SPECIAL PROVISIONS FOR PRODUCTION OF NRC RECORDS
SPECIAL CIRCUMSTANCES MUST BE SHOWN FOR
DEPOSITIONS AND INTERROGATORIES

PRIVILEGED DOCUMENTS CAN BE OBTAINED IN CERTAIN
CIRCUMSTANCES BASED ON COMPELLING NEED

DISCLOSURE BY NRC PURSUANT TO PDR (10 CFR 2.790)

ALL FINAL NRC RECORDS AND DOCUMENTS AVAILABLE IN PDR

PREDECISIONAL DOCUMENTS NOT MADE AVAILABLE

DOCUMENTS EXEMPT UNDER FOIA NOT MADE AVAILABLE

DOCUMENTS AVAILABLE IN MICROFICHE AND SOME HARD COPY

DISCLOSURE BY NRC PURSUANT TO FOIA (10 CFR PART 9)

ANY DOCUMENTS CREATED OR OBTAINED (NRC HAS POSSESSION OR CONTROL) BY NRC IS AGENCY RECORD SUBJECT TO DISCLOSURE

IF NRC ADMINISTERS LSS ARE DOCUMENTS IN LSS AGENCY RECORDS? PROBABLY NOT, SINCE MERE LOCATION DOES NOT ESTABLISH POSSESSION

ANY INDIVIDUAL MAY REQUEST DOCUMENTS

NO DEMONSTRATIONS OF RELEVANCE TO ANY PARTICULAR ISSUE NEED BE SHOWN

WITH EXCEPTION OF CONFIDENTIAL BUSINESS INFORMATION, NO OPPORTUNITY TO COMPEL DISCLOSURE OF PROPRIETARY OR PRIVILEGED DOCUMENTS BASED ON SHOWING OF NEED

PERSONAL RECORDS (UNCIRCULATED PERSONAL NOTES, PAPERS) GENERALLY NOT CONSIDERED AGENCY RECORDS

REQUEST IS SUFFICIENT IF DOCUMENTS CAN BE FOUND WITH REASONABLE AMOUNT OF EFFORT

AGENCY DUTY TO CONDUCT REASONABLE SEARCH -- FAILURE TO PRODUCE ALL DOCUMENTS NOT NECCESARILY UNREASONABLE

REFERENCE TO PDR IS SUFFICIENT

QUERY -- WILL FOIA REQUESTORS BE ABLE TO FORCE NRC TO CONDUCT SEARCHES USING LSS? WILL NRC BE ABLE TO REFER REQUESTORS TO LSS TERMINALS IN PDR OR OTHER LOCATIONS?

WHAT INFORMATION CAN PARTIES OBTAIN

UNDER FOIA

ALL NON-EXEMPT (NONPRIVILEGED) AGENCY RECORDS

UNDER DISCOVERY IN LICENSING PROCEEDING

ALL NONPRIVILEGED DOCUMENTS RELEVANT TO ISSUES IN
CONTENTION

WHAT IS AN AGENCY RECORD UNDER FOIA

NRC-

10 CFR 9.3a DEFINES RECORD AS:

"...ANY BOOK, PAPER, MAP, PHOTOGRAPH, BROCHURE, PUNCH CARD, MAGNETIC TAPE, PAPER TAPE, SOUND RECORDING, PAMPHLET, SLIDE, MOTION PICTURE, OR OTHER DOCUMENTARY MATERIAL REGARDLESS OF FORM OR CHARACTERISTICS, MADE BY, IN THE POSSESSION OF, OR UNDER THE CONTROL OF THE NRC PURSUANT TO FEDERAL LAW OR IN CONNECTION WITH THE TRANSACTION OF PUBLIC BUSINESS..."

DOE

NO DEFINITION

JUDICIAL PRECEDENT

ANY RECORD CREATED OR OBTAINED BY AGENCY IS AGENCY RECORD

AGENCY OBTAINS RECORD WHEN IT HAS POSSESSION OR CONTROL

PERSONAL RECORDS NOT AGENCY RECORDS UNLESS USED FOR SOME OFFICIAL PURPOSE

FOIA EXEMPTIONS

1. MATTERS SPECIFICALLY AUTHORIZED UNDER CRITERIA ESTABLISHED IN AN EXECUTIVE ORDER TO BE KEPT SECRET IN THE INTEREST OF NATIONAL DEFENSE
2. RECORDS RELATED SOLELY TO THE INTERNAL PERSONNEL RULES AND PRACTICES OF AN AGENCY
3. RECORDS AND DOCUMENTS SPECIFICALLY EXEMPTED FROM DISCLOSURE BY STATUTE
4. TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION OBTAINED FROM A PERSON, AND PRIVILEGED AND CONFIDENTIAL
5. INTER-AGENCY OR INTRA-AGENCY MEMORANDA OR LETTERS THAT WOULD NOT BE AVAILABLE BY LAW TO A PARTY OTHER THAN AN AGENCY IN LITIGATION WITH ANOTHER AGENCY
6. PERSONNEL, MEDICAL OR SIMILAR FILES, THE DISCLOSURE OF WHICH WOULD CONSTITUTE A CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY
7. INVESTIGATORY RECORDS COMPILED FOR LAW ENFORCEMENT PURPOSES
8. RECORDS RELATED TO THE REGULATION OR SUPERVISION OF FINANCIAL INSTITUTIONS
9. GEOLOGICAL AND GEOPHYSICAL INFORMATION AND DATA CONCERNING WELLS

EXEMPTION 1
CLASSIFIED NATIONAL DEFENSE

INCLUDES INFORMATION RELATING TO PROTECTION OF NUCLEAR
FACILITIES AGAINST TERRORIST ATTACK

DOE DOCUMENTS DESCRIBING MEASURES TO PROTECT REPOSITORY
MIGHT BE EXEMPT

DOE MUST "CERTIFY" THAT IT WILL PROVIDE AT GEOLOGIC
REPOSITORY SAME SAFEGUARDS AS AT COMPARIBLE DOE FACILITIES
(10 CFR 60.31(B)) - CONSTITUTES REBUTTABLE PRESUMPTION OF
SECURITY

EXEMPTION 4
TRADE SECRETS AND CONFIDENTIAL COMMERCIAL OR FINANCIAL
INFORMATION

TRADE SECRET

ANY SECRET, COMMERCIALY VALUABLE PLAN, FORMULA,
PROCESS OR DEVICE THAT IS USED FOR THE MAKING,
PREPARING, COMPOUNDING, OR PROCESSING OF TRADE
COMMODITIES AND THAT CAN BE SAID TO BE THE END PRODUCT
OF EITHER INNOVATION OR SUBSTANTIAL EFFORT

CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION

WITHHELD IF:

RELEASE WILL IMPAIR THE GOVERNMENT'S FUTURE ABILITY TO
OBTAIN SUCH INFORMATION

OR

RELEASE WILL LIKELY CAUSE SUBSTANTIAL HARM TO
COMPETITIVE POSITION OF SUBMITTER

EXEMPTION 5
INTER-AGENCY / INTRA-AGENCY MEMORANDA

INCLUDES TRADITIONAL DISCOVERY PRIVILEGES

ATTORNEY CLIENT

ATTORNEY WORK PRODUCT

EXECUTIVE - CONSTITUTION-BASED

DELIBERATIVE - COMMON LAW-BASED

ATTORNEY CLIENT PRIVILEGE

PROTECTS ALL COMMUNICATIONS BETWEEN ATTORNEYS AND
CLIENTS

INCLUDES FACTS

INCLUDES OPINIONS

INCLUDES COMMUNICATIONS NOT IN ANTICIPATION OF
LITIGATION

APPLIES TO FEDERAL GOVERNMENT ATTORNEYS

ATTORNEY WORK PRODUCT

RECORDS PREPARED IN ANTICIPATION OF LITIGATION

PREPARED AT DIRECTION OF ATTORNEY

INCLUDES DOCUMENTS PREPARED BY CONSULTANTS

INTER-AGENCY / INTRA-AGENCY MEMORANDA
DELIBERATIVE PROCESS

INCLUDES CONSULTANT DOCUMENTS GENERATED OUTSIDE AGENCY

DOCUMENT MUST BE PRE-DECISIONAL

DOCUMENT MUST REFLECT GIVE AND TAKE OF AGENCY
CONSULTATIVE PROCESS - I.E., OPINION, RECOMMENDATION,
ETC.

DRAFTS MAY BE EXEMPT - ESPECIALLY THOSE CIRCULATED FOR
REVIEW

NOT APPLICABLE TO FACTUAL MATTERS - ALTHOUGH SUMMARIES
OF FACTS OR SCIENTIFIC OR TECHNICAL REPORTS MAY BE
EXEMPT AS DELIBERATIVE MATERIALS.

EXEMPTION 6
PERSONNEL RECORDS
CLEARLY UNWARRANTED INVASION OF PRIVACY

PROTECTS INDIVIDUALS AGAINST RELEASE OF INTIMATE DETAILS

BALANCING TEST TO WEIGH

PUBLIC INTEREST IN DISCLOSURE

SERIOUSNESS OF INVASION OF PRIVACY

EXEMPTION 9
GEOLOGICAL AND GEOGRAPHICAL INFORMATION AND DATA

SPECIAL PROTECTION AFFORDED TO THIS TYPE OF COMERCIAL
INFORMATION

APPLIES TO WELL INFORMATION OF A TECHNICAL AND SCIENTIFIC
NATURE

OBLIGATIONS IN DISCOVERY

REQUESTS MUST REASONABLY DESCRIBE DOCUMENTS OR INFORMATION

RESPONDING PARTY MUST CONDUCT REASONABLE SEARCH

REASONABLY CALCULATED TO UNCOVER ALL RELEVANT RECORDS

MAY BE REQUIRED TO UTILIZE COMPUTER LITIGATION SUPPORT
SYSTEM

MAY BE REQUIRED TO PROVIDE KNOWLEDGEABLE PARTY TO
ASSIST IN SEARCH

MAY BE REQUIRED TO WRITE PROGRAMS TO SEARCH SYSTEM

ACCESS TO COMPUTER MUST BE AUTHORIZED

COURT OR LICENSING BOARD MAY LIMIT OR ABUSE OR EXCESSIVELY
BURDENSOME REQUESTS OR REQUIRE REQUESTING PARTY TO PAY COSTS

RIGHTS TO DISCOVERY IN ADMINISTRATIVE HEARINGS

NO ABSOLUTE RIGHT TO DISCOVERY

BROAD AGENCY DISCRETION TO FASHION DISCOVERY PROCEDURES

NWPA (SECTION 114(d) CITES NO SPECIFIC HEARING PROCEDURES TO BE FOLLOWED

REFERS TO PROCEDURES UNDER EXISTING LAW WHICH INCLUDE FORMAL HEARING PROCEDURES ESTABLISHED BY NRC FOR CONSTRUCTION AUTHORIZATION

DISCOVERY MUST BE SUFFICIENT TO AFFORD DUE PROCESS

ADMINISTRATIVE DUE PROCESS

OPPORTUNITY TO BE HEARD

DUE NOTICE OF HEARING

FAIR CONDUCT OF HEARING

SUPPORT IN RECORD FOR DECISION

SUBMISSION OF PROPOSED FINDINGS AND TENTATIVE REPORT

OPPORTUNITY TO BE HEARD UPON EXCEPTIONS TO REPORT

DUE PROCESS AND DISCOVERY

CONSTITUTION DOES NOT REQUIRE A PARTY TO BE AWARE OF ALL EVIDENCE, INFORMATION AND LEADS TO WHICH AN OPPOSING PARTY HAS ACCESS

ACTION LIMITING DISCOVERY MUST BE SHOWN TO HAVE PREJUDICED PARTY'S CASE TO BE VIOLATIVE OF DUE PROCESS

JURISDICTIONAL QUESTIONS RELATING TO LSS

NO INDEPENDANT NRC JURISDICTION OVER PERSONS NOT PARTIES TO
A LICENSING BOARD PROCEEDING

NO JURISDICTION TO REQUIRE COMPLIANCE WITH LSS
REQUIREMENTS PRIOR TO HEARING

AUTHORITY FOR NRC TO DEFINE CONDITIONS FOR DESIGNATION AS
PARTY IN PROCEEDING

MAY INCLUDE CONDITIONS RELATING TO COMPLIANCE WITH
LSS