December 19, 2001

ALL AGREEMENT STATES

PROGRAM INFORMATION: NRC GUIDANCE TO STAFF ON APPLICATION OF ATTORNEY GENERAL ASHCROFT FOIA POLICY MEMORANDUM (STP- 01-084)

States have raised questions regarding the ability to withhold from public disclosure the October 16, 2001 Materials Licensee Security Advisory that is labeled "Limited Distribution-Need to Know, Not for Public Disclosure." In responding to this, the U.S. Nuclear Regulatory Commission (NRC) would apply the October 12, 2001 Attorney General Ashcroft Freedom of Information Act (FOIA) Policy Memorandum and the Department of Justice (DOJ) associated implementing guidance. On October 12, 2001, Attorney General Ashcroft provided Federal agencies the President Bush Administration's new policy statement on the FOIA. The Ashcroft FOIA Policy Memorandum along with DOJ guidance on implementing the new policy is located at: http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm. The NRC plans to implement the Attorney General's direction in responding to FOIA requests. A copy of the guidance provided to NRC staff to reflect the Attorney General's direction is enclosed for your information.

Although the NRC has not received a request for the October 16th Advisory, based upon the Attorney General's policy memorandum and DOJ's guidance, at a minimum, we would evaluate the release of this information to the public based upon factors such as, 1) the extent to which the information is in the public domain; 2) whether the information can be used to disclose vulnerabilities or weaknesses of a facility, system, or asset; and 3) whether disclosure of the information would (a) enable someone to circumvent or breach security of the facility, system, or asset, (b) risk circumventing of statute or regulation, or (c) cause harm. Based upon the foregoing, we would have a basis for withholding from public disclosure the specific actions identified on page 2 of the October 16th Material Advisory and the listing of relevant suspicious and unusual activities identified at the bottom of page 2 of the Advisory. The reasoning for this would be that the Advisory describes specific security measures that in combination can be used to reveal vulnerabilities.

We suggest that you provide your Attorney General's office a copy of Attorney General Ashcroft's memorandum when discussing any FOIA requests for this type of information. In addition, if there are any specific concerns on this matter, we are available to discuss them with you.

If you have any questions on this correspondence, please contact me or the individual named below.

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/RA/
Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure: As stated

STP-01-084

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