

Summary of 11/19/01 meeting with OGC on FOIA "high-two" exemptions

Attendees:

Don Hassell, OGC
Janice Moore, OGC
Bob Weisman, OGC
Chet Poslusny, SFPO
Charlie Miller, SFPO
Mark Delligatti, SFPO
Skip Young, SFPO
Mindy Landau, OEDO
Carol Ann Reed, OCIO

The meeting was held to discuss the potential to withhold certain information relating to the proposed Final Environmental Impact Statement on the Private Fuel Storage site from public disclosure that would satisfy the "high 2" exemption under FOIA. The "high 2" exemption refers to that portion of 10CFR part 2.790 that refers to certain material which may be withheld if it relates to NRC internal personnel rules and practices.

It was noted that the Commission has not yet decided which criteria the staff may use when making discretionary releases of information. However, the staff has a tight deadline that must be met requiring that the FEIS be made publicly available no later than December 21, 2001. Significant required processing time for this very large document makes waiting for Commission guidance not practical.

The attendees reviewed certain criteria and eliminated some that were not germane to the specific document to be reviewed. It was noted we could redact certain information and issue two copies of the document - one redacted version for public release and one full version to be kept from the public with non-disclosure agreements signed by all parties. Also, the hearing for PFS might need to be closed.

OGC noted the fact that since 95% of the information in the FEIS was already in the public domain (from the draft EIS), our case to pursue protection of this information from further public disclosure was weakened. However, OGC believes that they can go forward and try to defend our actions. OGC believes that the facts are on our side but the law is not. That is, the events of 9/11 have changed the world and our perception of which documents are sensitive but the legal requirements have not yet changed to support a broader definition of sensitive information.

If the redaction effort occurs, a small review team in NMSS would manage consensus and consistency for determining which material to redact from the FEIS. It was noted we may also need to "pull information back" from other locations such as Skull Valley, Utah, and Hill Air Force Station web sites as a follow-up to any FEIS redaction effort.

Finally, it was decided that NMSS would need to make the management decision whether or not to devote the resources to the redaction. It was also recommended that the EDO be briefed on their decision because their actions could set a precedent for subsequent major documents being reviewed for release by the agency.