

**RESPONSES TO LSNARP COMMENTS ON
Discussion Points Presented at the LSNARP Meeting - June 3-4, 2003
and
Feedback Requested in a Follow-up Letter from Dr. Andrew Bates**

Commenters

- (1) U.S. Department of Energy (DOE)
- (2) State of Nevada
- (3) Nuclear Energy Institute (NEI)
- (4) Nevada Nuclear Waste Task Force, Incorporated
- (5) Nye County, Nevada

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A. Comments on *April 15, 2003 "Analysis Of High-Level Waste Large Documents"*

1. The DOE prefers Alternative 1, however, since removal of the possibility of service interruptions associated with Alternative 1 is not within the control of the NRC, the DOE agrees with the NRC-recommended selection of Alternative 4.

NRC Response: The Internet is the telecommunications medium for the HLW proceeding, and the Internet is the limiting factor. Although the NRC communication infrastructure that supports the EIE process is not uniquely susceptible to time-outs or service interruptions, the NRC cannot control time-outs or service interruptions on the Internet that are associated with individual Internet service providers or the configuration of an individual's computer. As such, Alternative 4 appears to be the most effective choice to minimize service failures. In contrast, Alternative 1 is impractical for very large file sizes, particularly given that the time needed to transmit or retrieve large files is dependent upon the Internet communication speed available to the user.

No changes are made to the recommended alternative in response to this comment.

2. The DOE agrees with Alternative 4, but expresses the following concerns: 1) that the alternative may be more burdensome on and more time consuming for the parties than would be necessary if different technology were used; 2) the rule changes the NRC recommends to implement the alternative and associated delay may be unnecessary if other technical options were considered; and the use of optical storage media (e.g., CDs) for complex documents with non-text components (irrespective of size), without an option to transmit the document otherwise if possible, creates an additional burden on DOE. The DOE suggested that there be

a direct connection from DOE to NRC for transfer of files and that NRC should produce optical storage media for electronic material submitted by DOE.

NRC Response: The electronic transmission of documents is required by 10 CFR Part 2, Subpart J, and submission of documents via EIE is currently the mechanism NRC has established to facilitate such filings by all parties and potential participants in the proceeding, including DOE. Use of the EIE and the Internet provides a filing mechanism that is equally accessible to all parties on a nationwide basis, and participants would assemble their electronic submissions such that the material can be retrieved via the Internet in manageable segments. Nonetheless, the time required for electronic transmission of materials is directly related to the Internet communication speed available to the submitter or retriever. The optical storage media submission option thus is designed for objects that cannot be divided into manageable segments to allow ready transmission and subsequent retrieval via the Internet. NRC recognizes that the submission of materials on optical storage media may involve additional costs; however, submission of such media provides the benefits of enabling easy access to, as well as search and retrieval of, documentary materials stored on such media. By contrast, the DOE suggested modification of Alternative 4 1) could delay access to electronic submissions because of the need for additional NRC processing, and 2) does not provide for service of large electronic materials on other participants in the proceeding as is required by 10 CFR Part 2, Subpart J. Participants in any litigation are expected to bear the costs associated with service of documents and other materials on other participants in the proceeding, but have the latitude to structure their participation, as well as their electronic submissions, in ways that will reduce their costs. The NRC believes that Alternative 4 solves the problems of large and complex electronic document submittals while minimizing overall costs incurred by participants. Moreover,

because the generation of CDs is part of authoring the submission, it is not an activity NRC would undertake for the parties.

The NRC staff, however, will explore the feasibility of technology that will provide the capability to restart (at the point of failure) a file transfer that fails due to Internet service interruptions, a system enhancement that would assist electronic transmissions.

In addition, the NRC is open to proposals for other specific technical solutions that could be implemented before the proceeding starts and could reduce the burden and cost of all parties.

No changes are made to Alternative 4 in response to this comment.

3. NEI is able to comply with current regulations for electronic transmittal of documents to the Electronic Hearing Docket, but asserts that Alternative 4 is acceptable to NEI if it would not “disrupt” the Department of Energy’s current schedule for submitting a license application by December, 2004.

NRC Response: The NRC is issuing “*Guidance for Submission Of Electronic Docket Materials Under 10 CFR Part 2, Subpart J*” (Guidance) more than a year in advance of the planned DOE submission date for the license application.

No changes are made to Alternative 4 in response to this comment.

B. Comments on the May 9, 2003 report “Draft Guidance for Submission Of Electronic Docket Materials Under 10 CFR Part 2, Subpart J”

1. The DOE recommends that the “courtesy copy” optical storage media requirement be removed.

NRC Response: Under the Guidance, a courtesy copy on optical storage media of a large document sent in segments via EIE is not required. The courtesy copy of an EIE submittal is requested as a means to provide the NRC staff and participants in the HLW

proceeding with a locally accessible, useful reference copy of a segmented electronic document submitted to the docket. The EIE submittal is the official record copy. With respect to the license application, Section 1.2 of the Guidance states "DOE need not submit its license application via Electronic Information Exchange." The license application and any amendments and the environmental impact statement and any supplements may be submitted using optical storage media.

The Guidance Attachment B - Glossary will be updated to include a definition of "courtesy copy" in response to this comment.

2. The DOE recommends that the restriction on embedded links between documents be removed.

NRC Response: The restriction on embedded links between documents is applicable only to documents submitted to the NRC, not those documents resident on participant LSN web servers and should only impact a small population of documents with limited attributes (e.g., documents larger than 50 megabytes). Hypertext links to documents that reside at other web sites are problematic because the link could become inactive due to a change in computer configuration or software. While links within a single PDF file can be maintained, links between multiple PDF files cannot be maintained when they are captured as separate files in ADAMS, the NRC information system implemented to manage electronic documents. ADAMS stores bibliographic data about a given document as well as the storage location of the document file in a relational database. In doing so, it replaces the original file names used to create links between separate PDF files with system-generated file names. As a result, ADAMS can not recognize the original file names and each attempt to follow a link to an external file will result in an error condition. These error conditions would be confusing to users and

raise questions about the integrity of the documentary material and NRC's management of its official agency records.

In addition, it is not clear that the United States National Archives & Records Administration (NARA) will accept records with hypertext links between files since NARA has indicated hyper linked files will only be addressed on a case-by-case basis.

No changes are made to the Guidance in response to this comment.

3. The DOE recommends flexibility to use other physical storage media in addition to optical storage media for submission of documentary materials to the NRC with prior NRC approval.

NRC Response: Section 3.1 of the Guidance recognizes that potential participants or participants in the proceeding may need to submit certain electronic objects in various formats. Under 10 CFR 2.1013(c)(1), litigants are required to electronically transmit filings to all participants in the proceeding (as well as the Presiding Officer and the Secretary of the Commission) according to established format requirements. A participant that wishes to submit materials via other electronic media should seek permission from the Pre-License Application Presiding Officer (if appointed), the Presiding Officer or the Commission, as appropriate.

No changes are made to the Guidance in response to this comment.

4. The State of Nevada expressed concern that document components submitted on optical storage media may not allow full user access and that delays may be experienced in the delivery of the media. In addition, the State of Nevada is concerned that allowing exceptions to PDF, specifically Tagged Image File Format (TIFF) can pose serious problems for users.

Nevada Nuclear Waste Task Force and Nye County (also concerned about the use of TIFF) also oppose the use of optical storage media and file formats other than PDF due to the limited computing capacity available to many members of the public.

NRC Response: The Guidance is intended to provide full user access to documents and timely service of physical media using expedited delivery service in accordance with deadlines established by the Presiding Officer. The use of optical storage media for submission of documentary materials will allow participants in the proceeding to readily retrieve an oversized engineering drawing or other large graphic object potentially hundreds of megabytes in size that may be difficult to access via the Internet, depending on the speed of the communication link provided by an Internet Service Provider. PDF is the preferred format, as stated in Section 3.1 of the Guidance, and TIFF images should be converted to PDF whenever possible. The Guidance provides for the limited use of other file formats only in those instances where files may not be appropriate for rendering in PDF.

No changes are made to Guidance in response to this comment.

C. Comments on Potential Rule Changes

1. Timing of a possible rule change: DOE states that a rule change at this juncture may create uncertainty in the current process of preparing documents for the LSN. NEI states that new and unneeded NRC expectations may cause unnecessary delays. The State of Nevada expresses the potential for broad impact on parties and potential users resulting from modifications to Part 2.

NRC Response: Comments on possible impacts associated with a rule change will be addressed in any rulemaking undertaken by the NRC. While the prospect of rulemaking might result in some uncertainty, the format issues that have been discussed with DOE at public meetings starting in June 2002 and with LSNARP members at the June LSNARP 2003 meeting result, in part, from the need to ensure document integrity

and consistent pagination when electronic filings are accessed by multiple users. We plan to have a final rule in place early in calendar year 2004.

2. PDF format and optical storage media: DOE recommends no changes be made to the rule to address service using optical storage media and to stipulate Portable Document Format (PDF) as the document format for adjudicatory filings including 300 dpi as the minimum resolution. The DOE recommends that these issues be addressed by technology implementation and update to the Guidance document.

NRC Response: Because current regulations specify that filings are to be electronically transmitted to participants in the proceeding and the minimum resolution permitted for such service is less than 300 dpi, the sounder practice is to modify the regulations to address these technical issues.

3. LSN Document Duplication: The DOE expresses concern that any rule change to restrict duplication of documents on the LSN not be “absolute” and that a party or potential party must still identify its documentary material. The Nevada Nuclear Waste Task Force understands the need to avoid duplication of documents on the LSN while ensuring that no documentary material is lost.

NRC Response: The rule change contemplated by NRC staff may clarify that LSN participants need not include in their LSN server documentary material previously made available by another party/participant.

4. Type of Rule: The DOE recommends using a direct final rule for changes to 10 CFR Part 2. The NEI believes that existing rules are adequate, however, if a rule change must be done, it can be done using specific sections of the Administrative Procedure Act. Nevada Nuclear Waste Task Force believes that the rule change should be done in a diligent process with public participation.

NRC Response: The NRC has not yet decided the rulemaking process that will be used for the contemplated rule change, but will provide notice of its decision in the *Federal Register*.

5. Need for rule change: Nevada Nuclear Waste Task Force expresses the belief that rule changes are adjustments to accommodate the Yucca Mountain project.

NRC Response: The NRC is considering a rule change to, among other things, allow service of filings in the HLW proceeding by means other than electronic transmission for the benefit of all parties, participants, and the public. The contemplated rule change is not designed to accommodate the Yucca Mountain project, but rather to address the practical limitations associated with transmitting and accessing large electronic files over the Internet and transmission interruptions. The intent is to maximize the accessibility of the contents of the electronic docket to participants in the proceeding as well as the general public. The NRC will weigh alternative approaches as part of the rulemaking process.

6. LSNARP Involvement in Changes to 10 CFR Part 2: Nye County states that future considerations of changes to 10 CFR Part 2 should be fully discussed and reviewed within the LSNARP.

NRC Response: The NRC will seek the input of the LSNARP in future rulemakings consistent with the role of the LSNARP under 10 CFR 2.1011(e).

D. Comments on Participation in a Test of the Guidance

DOE, the State of Nevada, and NEI agreed to participate in a test of the Guidance and each organization provided a point of contact.

NRC Response: NRC will include DOE, the State of Nevada, and NEI in a pilot test of the Guidance.

E. Comments on the Need to Continue the LSNARP

DOE, the Nevada Nuclear Waste Task Force, and Nye County agree that the LSNARP should continue. The NEI agrees that the LSNARP should continue, but should not cause unnecessary delay in the licensing process. The State of Nevada states that the NRC is responsible for assuring the viability of the LSNARP regardless of the funding provided by the DOE.

NRC Response: The current LSNARP participants have expressed a willingness to participate in future LSNARP activities and state that there is a continuing need for the LSNARP. NRC will continue to support administrative costs associated with organizing and conducting LSNARP meetings. In issuing the final LSN rule (63 FR 71729, 71732-33, December 30, 1998), the Commission noted that there is a statutory prohibition against funding participants in NRC licensing proceedings and declined to provide funding to LSNARP participants.

F. Comments on the June 11, 2003 DOE Proposal to index DOE's LSN Documents

Nevada recommended that the NRC decline the DOE offer to index DOE's LSN documents for a number of technical reasons associated with the audit process.

NEI expressed support for the DOE offer to index DOE's LSN documents.

Nye County expressed agreement with the LSN Administrator, the State of Nevada, and the Nevada Nuclear Waste Task Force comments that the NRC should decline the DOE offer to index DOE's LSN documents. Nye County also stated that for some time in the course of discussions about documentary materials for discovery purposes, Nye County has understood that DOE would make its documents available over a long period of time.

NRC Response: In a letter to Joseph D. Ziegler, Acting Director, Office of License Application and Strategy, USDOE. dated June 27, 2003, the Licensing Support Network Administrator declined the DOE offer on technical grounds associated with the integrity of the LSN's existing audit processes.