

From: G Paul Bollwerk , ASLBP
To: Emile Julian
Date: 10/31/01 4:32PM
Subject: Expunging Existing Adjudicatory Record Material From the Public Record

Your October 26, 2001 e-mail requested ASLBP comments on whether and how existing adjudicatory public record material, or portions of record material, in ongoing proceedings could be removed or expunged from the public record if, in light of the events of September 11, 2001, the NRC staff now determines such material contains sensitive information.

We generally agree with your suggestions. Absent compelling, articulable public safety or national defense concerns that require immediate removal/redaction of information, in our view expungement from an existing public adjudicatory record should not take place until the presiding officer has issued an order authorizing such action. Assuming the staff believes such compelling reasons exist, a staff motion for protective order explaining those reasons should be filed contemporaneously with the withdrawal/redaction of the information from the existing public record. If, after receiving responses from the other parties to the proceeding, the presiding officer finds the motion should be granted and a protective order entered, the information would be accorded the same protection as nonpublic information now is given in NRC adjudicatory proceedings, i.e., in camera treatment in line with the terms of the protective order.

The danger in not following this procedural course is that there would be unexplained "holes" in the record as well as possible claims of Administrative Procedure Act (APA) or due process violations in connection with the restriction of access to previously-public information.

If you believe a meeting with OGC, OCAA, and other interested agency offices to discuss this matter generically would be useful, we would be glad to attend.

CC: Andrew Bates; Ann Hodgdon; Annette Vietti-Cook; Charles Mullins; John Cordes; Joseph Gray; Lee Dewey; Lynn Scattolini; Margaret Kim Basile; Mindy Landau; Robert Weisman; Wayne Davis

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