

NMSS/ASLBP

From: Mark Delligatti  
To: Mindy Landau  
Date: 3/18/02 7:53AM  
Subject: Re: Withholding Sensitive Homeland Security Information

NMSS

Mindy,

I suggest that Dan Graser's issues be discussed with Neil Jensen (OGC-attorney who works on non-hearing HLW issues, Bill Reamer, and possibly with somebody from Dambly's staff since they will be responsible for hearing-support for Yucca Mountain. I do not think that this is a case where NRC needs to conform to the LSN, but rather where the LSN will have to figure out how to work SHSI into its system.

Mark

ASLBP

>>> Dan Graser 03/18/02 07:43AM >>>

Your e-mail on the draft EDO memo to the Commission on Security Homeland Sensitive Information (SHSI) was forward to us by the Office of the Secretary to provide us with an opportunity to assess the impact of this policy on the availability of agency high-level waste (HLW) repository-related documentary material via the Licensing Support Network (LSN).

Although the disclosure principles outlined in the draft SRM seemingly can be applied by the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of the Chief Information Officer (OCIO) to the NRC HLW collection, there may be some aspects of LSN operation and procedures that you may wish to take into account relative to this guidance or future implementation of this guidance.

By way of background, as you are probably aware the LSN is a portal website through which potential hearing participants and the general public can search for HLW repository-related "documentary material" identified and housed on servers maintained and populated by the potential participants to the HLW repository licensing adjudication. The LSN portal website does not "house" the actual documents, but rather maintains an index of their content and header information that is updated periodically by "crawling" or "spidering" the content of the participant websites. Ultimately, however, the documents housed on the participants' servers and searchable/retrievable by using the LSN may be incorporated into the agency's records system as evidentiary hearing exhibits or attachments to filings made during the course of the HLW repository licensing adjudication. It also should be noted that the LSN rule makes provision for access to safeguards, propriety, and other information that is "privileged" or otherwise subject to nondisclosure by providing that while the nonpublic content of documents need not be disclosed, the document must identified with a document header. See 10C.F.R. §§2.1003,2.1006.

With this explanation in mind, a number of LSN-related items come to mind relative to the EDO guidance and the general subject of SHSI material that we would be glad to discuss with the working group.

1. In the HLW repository context, is there any need to coordinate with the Department of Energy (DOE) relative to NRC SHSI guidelines? Besides the fact that the LSN provides public access to any DOE HLW-related documentary material that is not identified as privileged or otherwise disclosure exempt, DOE documents put out for access through the LSN potentially will become NRC agency records by being used in the hearing. Is NRC simply going to make public anything that DOE provides as part of its HLW documentary collection via the LSN or will there be an attempt to "monitor" the DOE material that is submitted by the participants for the NRC public adjudicatory docket?
2. Nonfederal LSN participants (e.g, the State of Nevada) in all likelihood are already in possession of large numbers of DOE and NRC documents and may not feel any particular obligation to review them for compliance with agency SHSI guidelines. Is the LSN essentially like the Public Document Room (PDR) in that no duty exists to review government documents that have been placed on the system by others, absent some explicit NRC or DOE designation of the documents as SHSI? Further, who is responsible for monitoring what other participants have on their LSN servers to ensure that NRC SHSI designated documents are not being made available?

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3. Recognizing that the guidance is intended generally to govern NRC (and potentially other federal entity) documents, is there any concern that a nonfederal LSN participant with some technical sophistication might author and place on its LSN server a document that contains SHSI? If so, how should this possibility be addressed in the context of the LSN?

4. As was noted above, although the privileged/protected content of proprietary, safeguards, and other disclosure exempt documents does not have to be provided for LSN search and retrieval, the documents themselves generally must be identified via header information and their nonpublic status is subject to challenge before the Pre-Application Presiding Officer or the Presiding Officer. Is there any reason why the same treatment would not be applicable to SHSI documents?

CC: Frederick Sturz; Patricia Rathbun