



**Department of Energy**  
Office of Civilian Radioactive Waste Management  
Office of Repository Development  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321

QA: N/A  
Project No. WM-00011

**FEB 27 2004**

Mr. Daniel J. Graser  
Licensing Support Network Administrator  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Graser:

The U.S. Department of Energy (DOE) has reviewed your letter of February 5, 2004, proposing an "operational alternative" for populating the Licensing Support Network (LSN) with DOE documents. You asked that DOE respond to the proposal by February 27, 2004, in order for you to report back to the Commission.

The DOE appreciates the time and effort put forth by your office to formulate the proposal within the U.S. Nuclear Regulatory Commission (NRC) and commit resources as necessary to the task. Based upon our preliminary review, DOE believes the proposal sounds quite promising and, under proper conditions, may well enable DOE to provide the LSN Administrator (LSNA) with documents for the limited purpose of indexing and loading them prior to initial certification to facilitate LSN operations.

While your letter provided a general outline of the proposal, DOE believes there is the need for further discussions with your office before agreement and implementation of this approach. For example, in your letter you provide helpful reassurance that DOE's documentary material made available to the LSN staff would be protected from disclosure prior to DOE certification or absent DOE approval. In our view, important elements of such protection would include the following. All DOE documents received by the LSNA will be controlled to prevent their unauthorized disclosure. This would include preserving in strict confidence the information received, maintaining information in either locked files or areas providing restricted access to prevent unauthorized disclosure. In preserving this information, the LSNA would use the same standard of care it would use to secure and safeguard its own confidential information of similar importance, but in no event less than reasonable care.

FEB 27 2004

The documents would retain their character as DOE agency records, and would not be considered to be records in the possession or control of the NRC such that the NRC would consider them responsive to a Freedom of Information Act (FOIA) request directed to the NRC. Rather, any such FOIA request would be referred to the DOE for its direct response to the requester. Furthermore, DOE's control of the documentary material would include the exclusive ability to continue its evaluation of the material for relevancy and privilege after it has been provided to the LSN for indexing/loading. Thus, DOE would maintain its ability and right to refine the identification of documentary material appropriate for inclusion or subject to privilege in the LSN prior to DOE certification. Relatedly, DOE does not believe this arrangement would alter current policies or practices regarding NRC and DOE interactions in the pre-licensing phase (e.g., this arrangement itself would not trigger initiation of the high-level waste proceeding and attendant NRC rules of procedure).

We believe it is important -- for both DOE and NRC -- to have a common understanding on these and related matters before agreement and implementation of this proposal. We are available to meet at the earliest opportunity to discuss these matters and clarify the details of the proposal.

Your letter also requested a current estimate regarding the size of the DOE LSN document collection. As you know, DOE is actively collecting, processing and reviewing its documentary material for possible inclusion in the LSN. The current estimate remains within the range previously provided, approximately 3 - 4 million documents composed of 27.5 - 36.5 million pages.

Please contact me at (702) 794-5567 if you have questions on this letter.

Sincerely,



Joseph D. Ziegler, Director  
Office of License Application and Strategy



cc:

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