

July 6, 2004

MEMORANDUM TO: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

FROM: Daniel J. Graser /RA/  
Licensing Support Network Administrator

SUBJECT: DEPARTMENT OF ENERGY REQUEST TO REMOVE  
LICENSING SUPPORT NETWORK-INDEXED DOCUMENTARY  
MATERIAL AND CLARIFICATION REGARDING  
CERTIFICATION REPRESENTATION

On June 30, 2004, the Department of Energy (DOE) submitted a certification of availability of high-level waste (HLW) repository construction authorization-related documentary material pursuant to 10 C.F.R. Part 2, Subpart J. Relative to that certification, several items have arisen about which I believe the Commission should be aware.

I. Department of Energy Request to Remove Additional Licensing Support Network (LSN)-Indexed Material

As you may be aware, for several weeks prior to the DOE certification, at DOE's request we had been deleting from the LSN DOE documentary material previously indexed on the LSN. By letter dated July 2, 2004, I advised DOE Office of Civilian Radioactive Waste Management (OCRWM) Deputy Director John Arthur that, given DOE's representation to me that day it believed all requested deletions had been performed, subject to the completion of necessary integrity testing by LSN personnel, it was our intention to make the approximately 490,000 DOE documents still indexed on the LSN available by noon on July 3, 2004.

Thereafter, by letter also dated July 2, 2004, Mr. Arthur advised me that, notwithstanding the earlier DOE representation, because of problems identified with its own website containing HLW-related documents (which had caused DOE to take that site offline), DOE now believed there could be additional, previously-indexed DOE documentary material on the LSN that contained privacy information (e.g., social security numbers). As a consequence, he asked that the DOE collection on the LSN not be made accessible until DOE is able to verify that all such material has been deleted. Given this information, in consultation with LSN executive sponsor Chief Administrative Judge Paul Bollwerk, I made the decision that to protect the integrity of the LSN the remaining DOE materials on the LSN would not be made accessible on July 3 or over the July 4 holiday weekend.

I was advised by e-mail today that since its certification DOE has identified numerous additional documents that have been indexed and are currently on the LSN, but that need to be deleted because they contain privacy information. DOE indicated it is prepared to make these items available for deletion in the near term. However, in addition, DOE indicated it anticipates that

additional LSN-indexed documents will continue to be identified, perhaps for as long as two more weeks, and that it will request they also be removed from the LSN as DOE becomes aware of those items.

In my July 2 letter, I also advised DOE that, given its June 30 certification, any additional DOE requests to delete previously indexed materials would need to be made in accordance with section 14.5 of LSN Guideline 14. This guideline provides that a participant request to delete material already on the LSN must be presented to the LSN Administrator who, in turn, will bring the matter promptly to the attention of a Pre-License Application Presiding Officer (PAPO) to obtain a ruling on whether the material should be deleted.\* As I noted above, subsequent to its certification DOE has identified additional LSN-indexed materials that it wishes to have deleted from the system. Consistent with this LSN guideline, the authority to deal with this request, appears to reside with the Commission, whether by appointing a PAPO or taking some other action. As a consequence, with this memorandum I am bringing the DOE request to the Commission's attention for appropriate action.

In the interim, given the continuing DOE uncertainty about whether or not additional DOE documents currently indexed on the LSN contain privacy information, absent a Commission or PAPO order to the contrary, I will not make the DOE documentary material on the LSN accessible. Please be aware, however, that with DOE's recognition that more of the currently-indexed DOE documentary material on the LSN (which apparently also may be still available on its recently-reinstated public website) may contain privacy information that could take some undefined period of time to identify, postponing LSN accessibility of the currently-indexed DOE material until DOE identifies all this material could result in the DOE collection being unavailable on the LSN for a similarly indeterminate period of time.

## II. Clarification Regarding DOE Certification

Additionally, in accordance with 10 C.F.R. § 2.1009(c)(1), I believe it is appropriate to identify a statement in the DOE June 30 certification regarding a technical matter that requires clarification.

In its certification, DOE states that the "documentary materials that DOE is making available can be publicly accessed through the DOE's participant server, which is linked to the LSN central server . . . ." I would note that:

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\* That guideline provides:

If a participant determines that a document needs to be removed from its website, the participant must notify the PAPO or [Presiding Officer (PO)] via the LSNA by communicating the LSN Accession Number of the affected document and a description of why the document needs to be removed from its website. The document should not be removed until the participant receives permission from the LSNA or the PAPO/PO.

- The LSN indexes the DOE collection on, and otherwise interacts with, the DOE participant server on a transaction basis, but does not maintain an active link to that server.
- DOE requested that we place a link (i.e., an active hyperlink) to its document collection server on the LSN web site. We committed to including an announcement of that server's availability in the LSN Administrator's Announcements section of the LSN website. In consultation with the LSN's executive sponsor, Chief Administrative Judge Bollwerk, I did not commit to placing an active hyperlink as there was a concern this could be misinterpreted as an endorsement of the integrity of the documentary material on that DOE site relative to the LSN. Per our commitment, an announcement regarding the DOE website currently is on the LSN website, but does not contain an active link to the DOE site.

cc:

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