



Department of Energy
Washington, DC 20585

August 9, 2002

MEMORANDUM FOR: Distribution

FROM: Lee Liberman Otis *jl*
General Counsel

SUBJECT: Search for and Retention of Relevant Hard Copy and
Electronic Documents for the Licensing Support Network

1. Introduction

With the recent designation of the Yucca Mountain site for development as a geologic repository, the Department is moving forward into the licensing phase of the repository project. In conjunction with the preparation of the license application, the Department must prepare for the licensing proceeding that the Nuclear Regulatory Commission (NRC) will undertake in reviewing and determining whether to grant the Department a license to construct, operate and ultimately close the repository. A significant part of the NRC licensing proceeding (similar to court litigation) entails the discovery and production of documents (including electronic documents and e-mail) and other evidence relevant to the license application. The responsibility for the production and retention of documents extends to all offices and personnel within DOE and its contractors that work on licensing-related activities.

In order to comply fully with our obligations under NRC regulation, we need you to distribute this memo to all members of your staff that may have the kind of information described below. Section 3 of this memorandum outlines the steps each recipient of this memo must take in compliance with this directive.

2. The Licensing Support Network

The scope and process of discovery for the licensing proceeding have been defined by the NRC regulation found at 10 C.F.R, Part 2, Subpart J. To manage the document discovery process the NRC has directed the establishment of a Licensing Support Network (LSN). The LSN will be an internet based document discovery system that will contain all of DOE's documents relevant to the licensing proceeding, as well as documents of the NRC and other parties to the proceeding. DOE is responsible for loading the LSN with all of its discovery documents no later than six months in advance of submission of the license

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application. DOE must certify that all relevant documents are included at that time (initial certification), and again at the time the license application is submitted.

a. Documents Included in the LSN

The NRC regulations at 10 C.F.R. Part 2, Subpart J require DOE to include all documentary material in the LSN. Documentary material is a very broad term that includes all relevant documents. Document is defined as any written, printed, recorded, magnetic, graphic matter, or other documentary material regardless of form or characteristic. Thus, it includes not only printed material, but also electronic material and information such as computer files and e-mail. It also includes graphic material and information such as raw data, computer runs, computer programs and codes, field notes, laboratory notes, diagrams, and photographs. NRC has defined relevant in broad terms as having any possible bearing on a proceeding. NRC has made clear that the relevancy of a document is not dependent on whether or not it supports the position of a party or whether or not it is relied upon or cited by a party.

In order to permit compliance with the NRC regulation, it is necessary to identify and retain all potentially relevant documents. Any circulated draft, which is defined as a non-final document circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have non-concurred, should be considered a relevant document. Relevant documents that may be privileged (e.g., attorney-client, security-related, deliberative) also must be searched for and retained as outlined below. Such documents are identified in the LSN, but are not accessible unless otherwise required by the NRC.

b. Documents Not Included in the LSN

Certain categories of documents can be excluded from the LSN. These categories include: official notice materials, reference books, text books, press clippings and press releases, junk mail, and administration material such as budget, financial management, personnel, office space, and general distribution memoranda.

3. Actions to be Taken

To ensure the LSN is comprehensively populated at the time of initial certification, it is imperative that each office search for, segregate, and retain existing documents, and retain all documents on an ongoing basis, that may be included in the LSN. In searching for documents, the term relevant document is to be interpreted broadly in accordance with NRC guidance. Because of the intended purpose of the LSN, your search is not subject to limitations with which you may be familiar regarding what must be produced in response to other kinds of requests for information, such as requests under the