

**To:** Mal Knapp

**From:** Alan Brownstein, Director Regulatory  
Integration

**Subject:** Responses to NRC questions re: LSS

**Date:** May 9, 1995

Mal,

As discussed, I am attaching DOE's responses to the NRC questions submitted to us that are to be addressed at the May 12 meeting.

Alan

## RESPONSES OF APRIL 18, 1995 NRC QUESTIONS

1. At the time of the negotiated rulemaking the Department viewed the stated goals of the LSS as valid and achievable. Nothing has occurred in the time since the rule was promulgated to cause the Department to change this view. Moreover, the Department has a commitment to provide the resources necessary to make the LSS a reality within the time frame established in Subpart J. The DOE intends to satisfy the requirements of Subpart J regarding the functionality and timing of the LSS as a prerequisite to filing a license application with the NRC. As noted more fully below, although DOE is only required to have the LSS certified by the LSS Administrator six months prior to submittal of a license application, DOE remains committed to have significant portions of the LSS available for use by members of the Licensing Support System Advisory Review Panel well in advance of license application.

The LSS will contain the records from DOE documenting the chronology of events and decisions related to the Program mission. In particular it is expected that an administrative record--a statement of decision and identification of the considerations upon which the decision was made--will exist for all major decisions. The existence of this record in whatever discovery system is used for the license application means that there is no need to develop a unique system capability within the LSS.

2. DOE will use the LSS as the documentary basis for the license application, however, the rule specifies that no party or contractor to a party can operate the LSS nor can the LSS be located within a facility controlled by a party or a contractor to a party. Thus, it would seem that if the DOE were to use the LSS for its records management system the NRC would be operating the DOE's records management system which would appear to put the DOE in conflict with its responsibilities for maintaining and operating its own records system as required under the Federal Records System.

Independent of this control consideration, the possibility has been raised of using the LSS for the DOE records management system on the basis that significant savings might accrue. However, an examination of the details of the

costs, records management operations, and ancillary DOE actions leads to the conclusion that essentially no identifiable cost savings exists for the use of the LSS to support the DOE records management system within the constraints of the rule.

3. Concern has been expressed that the DOE program approach varies significantly from the procedure envisioned by the NRC for licensing the Mined Geologic Disposal System and that this variance will degrade the utility of the LSS. DOE's program approach contemplates providing a license application that is as complete as possible in light of information that is reasonably available at the time of submittal of the license application. With respect to the LSS, the need for, and the timing of, the LSS is unaffected by the program approach. Therefore, although DOE may continue a number of research programs, and the results of those programs will be loaded into the LSS, substantially all relevant documents needed to support the granting of a construction authorization, including documents needed to support a reasonable assurance finding by the NRC, will be in the LSS at the time of submittal of the initial license application.
4. DOE agrees that although not a requirement of the LSS rule, early use of significant functional portions of the system to review documents is a desired benefit. To that end, DOE anticipates having an initial number of documents loaded onto a system with LSS capabilities available for use by the members of the Panel in the 1997 time frame. Use of the system to search and retrieve documents will enable DOE to improve the system where needed well before LSS certification and license application. In addition, DOE anticipates having most of the documents loaded into the system and available to the Panel members in about three years.

This represents an aggressive schedule to which DOE is committed. DOE also recognizes that the development and certification of the LSS is on critical path for submittal of a license application. As noted more fully in response to Question 10 below, DOE has committed to the funding required to complete the LSS in a timely manner.

5. A schedule for LSS design and development is attached to this set of responses for your review. As noted in response to Question 4 above, DOE's schedule for completing the LSS has the LSS available for the affected parties well in

advance of license application submittal. Additionally this schedule includes time to allow iteration with the Licensing Support System Administrator if a problem should appear relative to certifying the loading of the system. A critical element for this schedule is availability of projected resource requirements. Additionally the schedule is based upon timely actions by all participating in the resolution of LSS issues as well as on the assumption that issues once resolved will remain resolved. New interpretations of requirements or additions to requirements add to the cost and impact the schedule. DOE has committed to provide the required resources over the next several years to assure that the LSS is certified in a timely manner and is available for use by members of the Panel as soon as reasonably possible. We are also gratified by the spirit of cooperation demonstrated by the Panel members in identifying and resolving key issues associated with LSS development.

6. The increase in time prior to license application submittal places no additional burdens upon the LSS design and development. The date of license application is fixed by the availability of data, analyses, and understanding. Thus the projected date for license application submittal is a milestone indicating that the materials supporting data, analyses, and understanding are available. The volume of the material is not dependent on the date of the license application submittal. Thus, because the program delay generally has not affected the number or volume of studies or other documents, but rather only the period of time during which various program documents have been and will be completed, there should be no additional burdens on the licensing process (i.e., discovery, depositions, hearing, etc.).
7. The DOE and the NRC are currently developing a Memorandum of Understanding that identifies the responsibilities of each in the design and implementation of the LSS. As a part of this Memorandum of Understanding the NRC will identify a set of certification criteria so that DOE can include these certification criteria in the design process as well as the test and verification standards. In addition, DOE continues to work with the NRC staff through interactions with the Panel and through the Panel's technical working groups. DOE is committed to assuring that the NRC is involved throughout the development and certification of the LSS.
8. The Licensing Support System Advisory Review Panel has been an effective forum for addressing the fundamental issues relevant to the design and development of the LSS.

Additionally the Panel's working groups have been instrumental in resolving critical open questions. This forum together with the direct discussions with the Administrator and his staff are instrumental in close coordination between DOE and NRC. Currently a Memorandum of Understanding is being developed to assure that this cooperation and coordination supports all LSS activities.

9. Steps are currently underway to give members of the Panel limited read-only access to a "firewalled" server that contains the header and abstract data available for portions of the documentary material that will be submitted to the LSS. It is anticipated that this access will begin to be available in late summer. Early access on the part of NRC and the other members of the Panel to what will be going into the LSS and to LSS functionalities will result in a more acceptable and certifiable system.
10. The six year budget planning for the LSS is given in the following table. These figures are direct LSS cost estimates including both DOE and NRC costs.

LSS BUDGET ESTIMATES IN MILLIONS OF DOLLARS

FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
2.7	3.1	15.1	7.6	6.5	7.3

11. The response to question 10 identifies estimates of dollars required to support the design, development and operation of the LSS. In general these budget estimates translate fairly directly into labor costs. The labor hour estimates for this six year span for both DOE and NRC LSS activities are:

LSS LABOR HOUR ESTIMATES IN THOUSANDS OF PERSON HOURS

FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
36	41	173	136	100	105

The current activities by DOE staff in direct support of the LSS constitute a level of about 1.0 full time equivalent.

12. DOE intends to put all of its program relevant records management system documents, apart from that material that is specifically excluded by subpart J, into the LSS. The

rationale for entering all but the regulatorily-excluded information into the LSS is to minimize any appeals to the LSS Administrator regarding the alleged failure of DOE to include information that is relevant or that could lead to the discovery of information that is relevant. In addition, the potential for error in judgment in making a relevance determination for individual documents is minimized. Recall that at the initial LSS rulemaking, there was a concern with the apparent high costs associated with document storage. Today those costs have been significantly reduced. Now the concern is with the cost of human participation (e.g., proof reading and screening of documents). Thus, disputes and costs are reduced by being inclusive, rather than exclusive, regarding loading documents into the LSS.

13. Because DOE has a records management system and as the DOE records are estimated to comprise about 85% of the total number of documents directly or indirectly relevant to licensing, the direct benefits to DOE of actually using the LSS for document retrieval and discovery are not great. The major benefit is to the NRC and other parties to the licensing proceeding in enhancing their ability to identify and review the vast number of DOE documents over a period of years prior to the licensing proceeding. The LSS will enable the parties to identify what they consider to be the relevant documents addressing key program issues. Thus, it is anticipated that prior to and immediately after DOE's submittal of a license application, potential contentions can be narrowed more effectively. In addition, the parties should be better prepared to address the contentions admitted into the licensing proceeding.

- a. The NRC is in a better position than DOE to assess how much time may be saved through the use of the LSS and as a result of other Part 2 procedural reforms enacted over the past several years. The DOE has no basis to be able to determine whether the use of the LSS will assure that the NRC will meet its licensing schedule under Subpart J; however, DOE does believe that the use of the LSS should result in a more efficient and timely licensing process because all parties will have had early access to all relevant documents in a relatively convenient electronic format.

- b. Again, it is difficult to estimate how much money may be saved through the use of the LSS. We believe that earlier NRC estimates given during the time of the initial rulemaking for Subpart J, which were based on a fairly strict discovery schedule to be imposed on the parties by the licensing board, projected a potential schedule savings

on the order of a few years, which in turn might result in potential cost savings of a few hundred million dollars. However, we are unaware of any recent NRC projections of cost or schedule savings that might result from the implementation of its regulations found in Subpart J.

c. DOE currently estimates that the direct cost of the LSS to DOE is approximately \$70 million for the ten-year life cycle.