

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of)	Docket No. PAPO-00
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 04-829-01-PAPO
)	
(High Level Waste Repository: Pre-Application Matters))	October 21, 2005

**THE DEPARTMENT OF ENERGY'S STATUS REPORT
REGARDING REDACTIONS AND PRIVILEGE LOG**

As directed by the PAPO Board at the October 13, 2005 case management conference, the United States Department of Energy (DOE) provides the following status report regarding (i) the redaction of its documentary material subject to secondary privilege claims; and (ii) preparation of its privilege log for primary privilege claims. DOE also provides a comment about the schedule for its redactions and privilege log in the Second Case Management Order.

A. Status of Redactions¹

1. Privacy and Business Proprietary Privileges. There are now only approximately 2,400 documents for which DOE intends to claim one or both of these privileges. The remaining documents previously estimated in these categories earlier this year have been determined as a result of ongoing reviews to either not qualify as documentary material (and therefore will not be produced on the LSN) or not be privileged (and therefore will be produced in full text on the LSN). Of the 2,400 documents still subject to these privileges, DOE has

¹ This does not address the redaction of documentary material with unclassified security information. As discussed in the October 19, 2005 teleconference, DOE and the Naval Nuclear Propulsion Program are just initiating the redaction process for their respective security protected documents.

completed the redaction review of approximately 1,400 and has approximately 1,000 left to redact. Of the 1,400 documents already reviewed for redaction, DOE has determined that approximately 175 cannot be meaningfully redacted (because the privileged information permeates the document) and should remain as header-only. For the rest of the 1,400 documents, DOE is in the process of creating electronic images of the redacted versions and loading them onto the LSN. DOE expects to complete the redaction review of the remaining 1,000 documents next week and proceed with the process of creating and loading redacted images of these documents onto the LSN.

2. Law Enforcement Investigative Privilege. None of DOE's documentary material is subject to this privilege.

3. Archeological Privilege. There are approximately 1,600 documents potentially subject to this privilege. It is uncertain how many of these will be susceptible to meaningful redaction. There also are potential concerns about releasing even redacted versions of these documents because of the sensitivity of information about archeological sites to Native American tribes. A specialist in the applicable statutes requiring protection of archeologically sensitive information is reviewing these documents to determine what, if any, portions are appropriately redactable. That review is expected to be completed by the end of November, 2005 (with the electronic processing and loading of any redacted images onto the LSN to occur thereafter). DOE will provide a supplemental report regarding the status of these documents and suggestions for any special treatment of them following the completion of that review.

4. Employee Concern Program Documents. DOE has identified fewer than 500 ECP documents to be redacted and produced in redacted form in the protective file maintained

by the LSNA. Approximately three-quarters of these documents have been redacted. The balance should be redacted in November, 2005.

B. Status of Primary Privilege Log

The number of DOE's documents subject to one or more primary privilege claims is now only approximately 5,900 documents. Work on completing the privilege log entries for these 5,900 documents continues, and DOE will provide an update on the status of that work when it provides the update on the archeological privilege documents.

C. Comment About Schedules

The Board questioned at the October 13, 2005 case management conference the continued need for the schedules in the Second Case Management Order regarding DOE's redactions and primary privilege log. As this reports shows, DOE has made substantial progress in reducing the number of its privilege claims and in redacting the remaining documents subject to a secondary privilege claim. DOE's collection of documents, however, is not static. DOE continues to generate documents that need to be collected, electronically processed, and reviewed. So while the large backlog of privileged documents that was the focus earlier this year is no longer a practical concern, new privileged documents will continue to be generated.

DOE has established efficient procedures to collect, process and review new documents. Even so, given the large number of documents that will continued to be generated, it is inevitable that there will be some privileged documents for which DOE will not have been able to either complete its redactions or prepare a privilege log entry at the time of DOE's initial certification (as well as the subsequent monthly certifications). The schedule in the Second Case Management Order provides necessary flexibility to deal with that inevitability, and DOE requests that the schedule remain as provided.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

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**THE DEPARTMENT OF ENERGY'S STATUS REPORT
REGARDING REDACTIONS AND PRIVILEGE LOG
CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing THE DEPARTMENT OF ENERGY'S STATUS REPORT REGARDING REDACTIONS AND PRIVILEGE LOG in the above captioned proceeding have been served on the following persons this 21st day of October, 2005 by Electronic Information Exchange.

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