

February 2, 2006

MEMORANDUM TO: William H. Ruland, Deputy Director
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

FROM: Joseph M. Sebrosky, Senior Project Manager **/RA/**

Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

SUBJECT: SUMMARY OF JANUARY 31, 2006, MEETING WITH THE
DEPARTMENT OF ENERGY (DOE) IDAHO OPERATIONS OFFICE TO
DISCUSS DOE'S PROPOSAL TO WITHHOLD INDEPENDENT SPENT
FUEL STORAGE INSTALLATION INFORMATION

On January 31, 2006, the U.S. Nuclear Regulatory Commission (NRC) staff from the Spent Fuel Project Office and the DOE Idaho Operations Office held a closed video conference meeting. The purpose of the meeting was to discuss DOE's request to withhold information considered sensitive by DOE from unfettered electronic public access on the NRC Agencywide Documents Access and Management System (ADAMS) web site. This request applies to three independent spent fuel storage installations (ISFSIs): DOE's Fort Saint Vrain (Docket 72-9) and Three Mile Island (TMI) Unit 2 (Docket 72-20) ISFSIs, and the Idaho Spent Fuel Facility ISFSI licensed to Foster Wheeler Environmental Corporation (Docket 72-25) and contracted to store DOE-owned spent nuclear fuel. Enclosure 1 is a list of attendees. Enclosure 2 contains the handouts from the meeting.

Highlights of the Meeting

In a letter dated April 20, 2005, (which is non-publicly available) DOE described its rationale for wanting to withhold specific ISFSI information for the three dockets from unfettered public access. During the video conference DOE provided a summary of the rationale included in the April 20, 2005, letter, and also made some additional points including the following:

- C In the April 20, 2005, letter DOE requested (in addition to other documents) that NRC also withhold the safety evaluation reports (SER) associated with these facilities because of security concerns. DOE withdrew the request to withhold SERs and no longer considers the SERs sensitive for the following reasons:
- DOE performed a more detailed review of an SER based on a Freedom of Information Act (FOIA) request received by NRC and determined that the type of information contained in the SER was not sensitive
 - the fact that the SER is an NRC generated document, and

- DOE's understanding of the need for the NRC to publicly document its conclusions related to the safety of these facilities.
- C DOE believes that certain information on these dockets including the safety analysis reports (SARs) and emergency plans (EPs) should be withheld from unfettered public access because of the following:
- DOE considers the information sensitive from a security standpoint and it is conservative to withhold this information as sensitivity criteria continues to evolve
 - it is DOE policy to withhold such information for facilities that DOE owns, operates, and regulates
 - DOE believes that there are several key differences between DOE and commercial ISFSI licensees, such as protection of DOE-regulated nuclear facilities that are collocated with two of the ISFSI locations, as DOE is a Federal Agency with separate accountability
 - the licenses for these non-contentious facilities have already been issued and there are no active licensing iterations beyond occasional requests for Amendment(s) that have been published on ADAMS with DOE consent
 - DOE does not make Safety Analysis Reports (SARs) available to the public. Allowing these SARs for DOE-owned (or contracted)/NRC regulated facilities to be publically available would set an undue precedent.

The NRC staff provided highlights of its June 10, 2005, letter responding to DOE's request to withhold information (this letter is also not publicly available) including the following:

- C The staff does not believe that DOE has sufficiently articulated the differences between DOE ISFSIs and commercial ISFSIs to allow the NRC to determine that such withholding of information is warranted.
- C It is not clear to the staff how openness in the regulatory process affecting DOE ISFSI installations will be ensured given the amount of material that DOE proposes to control

The staff and DOE then discussed the NRC criteria for withholding ISFSI information that is contained in RIS 2005-31, "Control of Security-Related Sensitive Unclassified Non-Safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material." The NRC criteria was not available to DOE until after DOE prepared its April 20, 2005, letter. DOE does not believe that the criteria contained in the RIS sufficiently addresses a Federal Agency (with separate regulatory responsibility and accountability) as licensee and goes far enough in allowing information to be withheld from unfettered public access when considered sensitive by (in this case) the DOE.

For example, DOE believes that the design basis information (including postulated accident scenario analysis) should be withheld from public access while the NRC guidance contained in

the RIS would generally release such information. DOE noted that the RIS does accommodate State and local Agencies (with respect to withholding Emergency Plan information), yet is silent with respect to Federal Agencies. The staff noted that similar information to what DOE is proposing to withhold is already available in the licensing support network associated with Yucca Mountain.

The staff and DOE also discussed DOE's proposal that DOE should be the lead agency to respond to any FOIA requests associated with DOE generated material for these ISFSIs. The staff disagreed with DOE's proposal to be the lead FOIA Agency and stated that NRC should be the lead agency in responding to FOIA requests on these dockets. NRC and DOE agreed to hold additional discussions on this significant point of disagreement. The staff and DOE, until this issue is resolved, agreed to continue the current practice of the NRC responding to FOIA requests on these dockets but, prior to releasing information, the NRC will consult with DOE to identify any information that DOE believes should not be released.

The staff and DOE discussed possible options for allowing limited access to information on these dockets, such as a local public reading room as this did not deviate from DOE's policy to withhold electronic document availability, where certain information such as the ISFSI SARs would be available near the site. In order to gain access to the information an individual would have to appear in person and show some form of identification. DOE also stated that it did not have a problem with making arrangements to allow members of the public with a legitimate need-to-know access to the information away from the site in a controlled environment, and recently has. In both cases individuals would be allowed to take notes but would not be allowed to make copies of the information. The staff stated that it did not understand why such arrangements needed to be made for DOE ISFSI information and similar arrangements are not needed for commercial ISFSI information or commercial nuclear power plant information. DOE reiterated that unlike DOE, public utilities have no regulatory authority or Federal accountability other than through NRC. DOE is separately accountable for the safe and secure operation of its facilities, including facilities co-located with NRC licensed facilities. In addition, both the staff and DOE recognized that a form of identification is not required for FOIA requests.

Two actions resulted from the meeting:

- C DOE and the staff took an action to make arrangements for a phone call to discuss the legal issues associated with DOE's opinion that DOE has FOIA ownership and control of documents generated by or for DOE and thus DOE's responsibility to respond to FOIA requests for DOE-generated material on the three ISFSI dockets. This action was agreed to be the top priority.
- C The staff took an action to review a SAR for one of the ISFSI sites and identify the information in the SAR or portions of the SAR that the staff believes should be withheld from the public in accordance with the criteria contained in RIS 2005-31. DOE would be provided with the results and then comment on the staff's efforts. DOE emphasized that this is strictly an informational exercise and does not imply that the resultant document is acceptable to DOE for electronic release on ADAMS.

DOE was provided a draft of the meeting summary for review to allow them the opportunity to identify any information that should not be made publicly available. DOE also was provided the

W. Ruland

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opportunity to review the draft meeting summary and to provide comments regarding the accuracy of the summary.

No regulatory decisions were made at the meeting.

Docket No.: 72-9, 72-20, 72-25

Enclosures:

1. Attendance List
2. Meeting Handouts

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Combined Service List for Idaho Spent Fuel Facility (Docket No. 72-25), TMI-2 Fuel (Docket No. 72-20), and Fort Saint Vrain (Docket 72-9)

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DOE Idaho Operations Office and NRC January 31, 2006

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Enclosure 2

Meeting Handouts