

Meeting with Department of Energy Idaho
Operations Office to Discuss Withholding
Independent Spent Fuel Storage
Installation (ISFSI) Information

January 31, 2006

Spent Fuel Project Office
Nuclear Regulatory Commission

Purpose and Outcome

- Purpose
 - To discuss DOE's proposal to withhold the majority of information from unfettered public access for the Fort Saint Vrain, TMI-2, and Foster Wheeler ISFSIs
- Outcome
 - Issues regarding withholding of the information from unfettered public access clearly identified and next steps identified

Agenda

- I. Opening remarks (DOE/NRC) 5 minutes
- II. Description of the problem (20 minutes)
 - a. DOE April 2005 letter that discusses the rationale for withholding the majority of the information for the three dockets from unfettered public access in ADAMS (DOE - 5 minutes)
 - b. NRC June 2005 response to DOE letter disagreeing with DOE's request to withhold the majority of the information for the three dockets from unfettered public access (NRC-5 minutes)
 - c. Examples of information released to the public on these dockets - e.g., Freedom of Information Act (FOIA) requests or public inquiries (NRC/DOE - 5 minutes)
 - d. Ownership of FOIA requests for DOE ISFSI information (DOE/NRC)
 - e. Discussion of informal agreement to check with DOE before NRC releases information on these dockets (NRC/DOE -5 minutes)
- III. Discussion of NRC criteria for withholding information (10 minutes)
 - a. Commission approved criteria for Part 72 licensees (NRC- 5 minutes)
 - NRC criteria publicly available at <http://www.nrc.gov/reading-rm/sensitive-info/materials.html>
 - b. Why this criteria is not appropriate for DOE facilities (DOE - 5 minutes)
- IV. Legal constraints to withhold the information (10 minutes)
 - a. Freedom of Information Act
 - b. Licensing actions
- V. Identification of Issues (all)
 - a. Issues or clarification of issues not identified in either DOE or NRC letter
- VI. Identification of next steps (all)
- VII. Wrapup

Description of the Issues (cont)

- NRC takes exception to the broad scope of material that DOE proposes to withhold
 - **As stated in NRC 6/10/2005 letter:**
 - Differences between DOE ISFSIs and commercial ISFSIs not articulated
 - Openness in regulatory process
 - Part 72 licensing actions
 - Freedom of Information Act Requests
 - **NRC released criteria in Regulatory Issue Summary (RIS) 2005-31 dated 12/22/2005**
 - Criteria applied to other ISFSIs and resulted in more information being publicly available than DOE proposes
 - **DOE not the licensee for Foster Wheeler**

Description of the Issues (cont)

- Some information has been released in ADAMS on these dockets
 - TMI-2 ISFSI license amendment 4 issued in June 2005
 - Incoming request, requests for additional information and staff safety evaluation report made publicly available
 - Safety evaluation report (SER) for Foster Wheeler ISFSI in response to FOIA request
 - released after DOE concurrence it did not contain sensitive information
 - SER requested by DOE to be withheld in 4/20/2005 letter
- Information has been released due to litigation associated with DOE's failure to take title to spent nuclear fuel
- Similar information already available in the licensing support network associated with Yucca Mountain

Description of the Issues (cont)

- Ownership of FOIA requests for DOE ISFSI information
 - DOE proposes to process some/all FOIA requests associated with ISFSIs on NRC's behalf
 - It is inappropriate for DOE to respond to these FOIA requests
- Informal agreement to consult with DOE before information is released
 - In accordance with standard FOIA procedures

RIS 2005-31 Criteria for Withholding Sensitive Information

- RIS issued on 12/22/2005
 - Some of the criteria consistent with DOE's request
 - Site specific hazards associated with nearby industrial, transportation, and military facilities
 - Some emergency planning information
 - Detailed design drawings
- DOE needs to address why:
 - RIS 2005-31 criteria is not appropriate for its ISFSI sites
 - Any special security considerations that should be taken into consideration

Withholding the Information

- Freedom of Information Act
- Licensing Actions
 - Hearing opportunities afforded in accordance with 10 CFR Part 72
- Litigation associated with DOE's failure to take title to spent nuclear fuel
- DOE's proposal that public reading rooms be established
 - Require form of identification prior to access
 - NRC issues
 - Resource and consistency issues – why does this need to be done for these facilities and not nuclear power plants
 - Form of identification not required for FOIA requests

Identification of Issues/Next Steps

- Discussion of DOE Idaho's plan to elevate the issue
- Issues or clarifications not identified in either DOE or NRC letter