

1014 Carlyon Avenue SE  
Olympia, WA 98501

**Malachy R. Murphy**  
Consultant in Environmental, Regulatory and Governmental Affairs  
DOCKETED  
USNRC

(360) 943-5610  
FAX (360) 943-5648

'98 MAR 30 P2:48

March 26, 1998

Secretary  
U.S. Nuclear Regulatory Commission  
Washington D.C. 20555-0001

OFFICE OF SECURITY  
RULEMAKING AND  
ADJUDICATIONS STAFF

Attn: Rulemakings and Adjudications Staff

Re: 10CFR 2, Subpart J  
RIN 3150-AF 88

DOCKET NUMBER  
PROPOSED RULE **PR 2**  
(62FR60789)

③

Enclosed please find the final comments of Nye County, Nevada on the proposed changes to 10 CFR 2, Subpart J (The LSS Rule). The comments have also been transmitted by E-mail to Ms. Carol Gallagher on this date.

Thank you for your assistance.

Yours very truly,



Malachy R. Murphy  
Regulatory & Licensing Advisor  
Nye County Nuclear Waste Repository Project Office

cc: Les Bradshaw  
Nick Stellavato

## **NYE COUNTY'S COMMENTS ON PROPOSED CHANGES TO 10 CFR 2, SUBPART J**

After reviewing the summary and transcript of that meeting, the Nye County Nuclear Waste Repository Project Office reaffirms the comments made orally by its representatives at the Advisory Review Panel (ARP) meeting in Las Vegas on February 24 & 25, 1998. These final comments are offered primarily for purposes of emphasis.

### **General Approach**

We fully agree with the general approach of moving the LSS to an Internet based system. Clearly, as the Supplementary Information states, and as the ARP members agreed, technology has long since overtaken the LSS development process, and the centralized LSS, while perhaps not entirely "obsolete", can no longer be economically justified. We also agree with the proposed approach to allow flexibility to incorporate innovations in information management technology as they become available. We can simply never play "catch-up", especially in view of the ponderous nature of the rulemaking and government procurement processes. Participants must be free to take advantage of technological advances as they become available without fear of finding themselves in violation of a rule which could become obsolete with the introduction of each new generation of software or hardware.

As stated at the ARP meeting, however, even an Internet based, flexible system should have a name. LNet, or LSN, seemed to be generally accepted by the participants at the ARP meeting, and we thus recommend its formal adoption and incorporation into the final rule changes.

### **Documentary Material & Relevancy**

The definition of "Documentary material" is much improved over an earlier proposal, and coupled with the treatment of what we once called "raw data", or graphic oriented material, as well as the rules applying to derivative discovery in §2.1019, is a good start. Along with, we believe, a majority of the ARP, Nye recommends that the language "or is likely to lead to the discovery of relevant information" be reinserted from the current rule. This would make the LNet loading requirements more consistent with current discovery practices, yet, with the exclusions which the rule incorporates would in our view keep the burden on the participants, principally of course the DOE, at a workable level. Additionally, the rule itself, and its supplementary information, should clearly provide that the definition applies to

documents which will be used only in the DOE EIS, and/or the NRC's consideration of whether or not to adopt that EIS, and not just to the more narrow (on its face at least) scope of the License Application.

### **Compliance**

We agree with the views expressed at the ARP meeting to the effect that, regardless of where within the NRC the position is located, or what its title may be, certain functions of the current LSS Administrator should be retained, and reside with a single officer or organization. Where that officer or entity is located is really an internal matter, so long as the functions and authority clearly exist. Among the functions, as pointed out by the ARP members, should be the ability and authority to review participants readiness to allow access to their documentary material; receive and resolve complaints regarding network problems; perform periodic audits or compliance reviews; assist participants in achieving and maintaining compliance; and coordinate technical issues such as standards for search engines.

Additionally, the Director of NMSS should have the authority, indeed the responsibility, not only to reject the DOE License Application if it is not able to be accessed through the electronic docket. That almost goes without saying. The authority should clearly extend to rejection of the LA if all requirements of the rule are not met at the time the LA is submitted. This can be accomplished by retaining the language of the current §2.1011(d)(6)&(7), and moving those provisions into §2.1012. Furthermore the revised rule should not abandon entirely the concept of some form of independent audit, or compliance assessment program, similar to what was previously proposed, and discussed at the LSSARP meeting in October of 1993.

### **Advisory Review Panel**

We appreciate the desire on the part of the NRC to reduce the number of formal advisory committees in keeping with the administration's policy in that area, but Nye, like other members of the ARP, strongly opposes reducing the LSSARP to a mere "informal users group". We thus much prefer the alternative expressed in the draft of a revised rule. Even that draft requires further revision, however. The State of Nevada and each affected unit of local government should be separately represented, rather than through any form of coalition, as §2.1011(c)(2) now calls for. That coalition language is an artifact of the original negotiating committee, and in practice has never been followed. Each unit of local government has had separate representation, as a matter of practice, on the LSSARP. The revised rule should acknowledge and formalize that reality. This is particularly true for Nye County, which has had its status as the situs jurisdiction recognized formally by the Congress in the NWPA, and whose interests,

position of neutrality, and level of activity in the program, are significantly different from other affected local governments. We believe there was strong support for this position, if not and outright commitment, expressed by the NRC representatives at the ARP meeting.