

March 1, 2007

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes */RA/*
Executive Director for Operations

SUBJECT: OFFICE OF THE INSPECTOR GENERAL INVESTIGATION -
SECURITY OF SENSITIVE NRC MATERIAL LOCATED AT
FORMER LOCAL PUBLIC DOCUMENT ROOM LIBRARIES

In accordance with the Chairman's February 6, 2007, tasking memo, the U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the January 31, 2007, report from the Office of Inspector General (OIG) regarding the security of sensitive NRC material in former local public document room (LPDR) libraries. The Chairman requested that the NRC staff advise the Commission on its views regarding the OIG's findings and recommendation. The staff was also asked to include any additional information, including actions taken or planned, that would assist in the Commission's review.

In its January 31, 2007, report, the OIG recommends that the Commission direct the NRC staff to review documents now considered to be sensitive unclassified non-safeguards information (SUNSI) that are located in former LPDRs and are available to the public. The OIG recommends that the staff review include the assessment of the current sensitivity of these documents and the creation of a consistent policy to handle these documents, either as SUNSI or publicly available information. The enclosures provide the results of the staff review.

Enclosure 1 contains background information pertaining to the history of the LPDR program. As directed in the Chairman's memo, Enclosure 2 provides five options for Commission consideration for addressing the OIG's findings and recommendation. Option 1 is to maintain the status quo. Option 2 involves review of documents in the Public Legacy Library (PLL) to identify documents that today would be considered sensitive in accordance with our SUNSI criteria and removal of their microfiche addresses from the citations. Option 3, which could be started only after completing Option 2, involves physically removing identified sensitive documents from the microfiche. Enclosure 2 describes how this would be accomplished for the different libraries. Option 4 is to attempt removal of all the microfiche collections, in their entirety, from the public domain. Option 5 is to disable the PLL, the NRC provided finding tool for the microfiche collections.

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The staff recommends that the Commission approve Option 1 and maintain the status quo. The staff believes that the amount of sensitive information available in the LPDRs is small and that its utility is minimal given the fact that the level of sensitivity is below that of classified or Safeguards Information and because of its age and post-September 11 security enhancements and physical modifications to NRC-regulated facilities. In addition, the staff believes that the resources, and/or potential minimal benefits, identified with the other options are not justified when weighed against their advantages and disadvantages, as described in Enclosure 2. The NRC continues to work with licensees to ensure that the most recent and relevant information related to the security of nuclear facilities is protected. However, it remains a fact that even if the NRC were fully successful in removing all SUNSI from these former LPDR collections, it would be impossible to completely control public access to these documents because of previous releases to the public and the existing private collections that replicate the LPDR collections.

The NRC staff recommends that this paper not be made publicly available. The NRC has not yet responded to a congressional request pertaining to this report, and the NRC routinely does not make its option papers on how the agency should respond to OIG recommendations available.

The Office of General Counsel reviewed this package and has no legal objection. The Chief Financial Officer reviewed and concurred on this package.

SECY, please track.

Enclosures:

1. History of the Local Public Document Room Program
2. Options for Handling the Security of Sensitive NRC Material Located at Former Local Public Document Room Libraries

cc: SECY
OGC
OCA
OPA
CFO

History of the Local Public Document Room Program

In 1971, the Atomic Energy Commission implemented a program to establish Local Public Document Rooms (LPDRs) within a 50-mile radius of proposed nuclear power facilities, upon receipt of a license application. This program provided local area residents with access to documents considered by the staff during the licensing, construction, and operation of commercial nuclear power plants and later expanded to include other types of NRC-licensed facilities. Starting in the early 1980's, the NRC provided microfiche in lieu of paper copy to all participants in the LPDR program. This included microfiche cabinets, a microfiche reader, and access to the Nuclear Documents System (NUDOCS), the predecessor database to the NRC Agencywide Documents Access and Management System (ADAMS). Microfiche, which was introduced to the Agency in the late 1970s, was at the time the state of the art technology for distributing and archiving information.

Microfiche is no longer the preferred method for document searching since newer systems, such as ADAMS and other electronic databases, have been developed. Microfiche is cumbersome, unfamiliar to many people, and lacks ease of accessibility. It does not allow for easy full text searching that is available in online databases. Additionally, many people today are not familiar with the older microfiche technology and do not know how to use it effectively. In 1999, the Commission decided to discontinue the LPDR Program, due to the implementation of the ADAMS, which allows the public to gain access to unclassified, nonsensitive NRC documents through the Internet.

Today, although the NRC's former LPDR collections are available in a finite number of locations, many of the host libraries that house these collections either do not know where the collections are located or do not know how to effectively use them as was demonstrated in the OIG investigation (Finding #1). There is a significant difference in accessibility between the Sensitive Unclassified Non-Safeguards Information (SUNSI) that was in ADAMS and the limited SUNSI material that is in the LPDRs. Following September 11, 2001, the NRC focused on removing SUNSI material from ADAMS because it was easily retrievable through the internet from virtually any computer around the world. In contrast, to access documents through the microfiche collections, one must go to the geographical location of the collection and with the finding tool from the Public Legacy Library (PLL), obtain a specific citation to determine the document's location, then physically retrieve it from the collection using microfiche reader equipment. Therefore, sensitive information in the microfiche collections is not as readily accessible as it was within ADAMS.

After September 11, 2001, the NRC changed the categorization of some publicly available information from nonsensitive to SUNSI and now withholds that information from the public when it is within the control of the NRC. A limited amount of sensitive information regarding commercial nuclear facilities still exists in a variety of public and private collections that the NRC does not control.

Following September 11, 2001, the NRC also immediately advised nuclear facilities licensees to review their information collections to decide if information now determined to be sensitive was publicly available. The NRC conducted a similar review of its web site and public record-keeping systems. Some information that was previously publicly available was removed.

Subsequently, the NRC issued guidance to staff and licensees on how to recognize sensitive information. It is important to note the collections in the former LPDRs were outside of NRC's control during the document reviews conducted by the NRC in 2001 and 2004. More importantly, documents in the former LPDRs have been freely available to the public to view and replicate for decades. During the 1990's, the NRC Public Document Room's document reproduction contractor routinely copied 2.0 to 2.5 million pages of NRC documents per year for the public.

Currently, the NRC screens its documents prior to making them publicly available to ensure that sensitive information is appropriately withheld. The NRC continues to work diligently to balance its commitment of openness with the public with the need to prevent releases of sensitive information. The NRC staff acknowledges that a limited quantity of documents is currently in former LPDR collections that meet the revised withholding criteria for SUNSI information. However, the NRC believes that the amount of such information is small, its utility is minimal, and it is not easily accessible. Therefore, the NRC had decided not to attempt to retrieve or restrict access to the previously released information and instead focused efforts on more recent public information in its easily retrievable electronic records collections. This judgement was based on the evidence that the NRC had at the time. The staff's current review of this matter indicates nothing has changed to alter this judgement.

Options for Handling the Security of Sensitive NRC Material Located at Former Local Public Document Room Libraries

In response to the Chairman's request, the staff identified several options, as presented below, for dealing with the OIG's findings and recommendation.

OPTIONS:

Option 1: Maintain the Status Quo.

While the information publicly available in the Local Public Document Rooms (LPDRs) was considered nonsensitive by the U.S. Nuclear Regulatory Commission (NRC) prior to September 11, 2001, some is now designated as Sensitive Unclassified Non-Safeguards Information (SUNSI). The NRC understood that upon establishing its criteria for designating information as SUNSI, limited quantities of information now considered sensitive would remain publicly available. To limit the ability to locate these sensitive documents using NRC-controlled information, the staff has removed the three roadmap documents that the OIG identified as containing possible references to SUNSI material from the Public Legacy Library (PLL).

On April 4, 2002, the NRC staff informed the Commission, in COMSECY-02-0015, "Withholding Sensitive Homeland Security information From The Public," that the NRC does not control archival collections external to the agency and documents may continue to be made publically available through other sources. The NRC determined that the usefulness of the information that remained publicly available was minimal given its age, accessibility, and subsequent improvements in security programs and measures. In addition, the anticipated cost and effectiveness of efforts to retrieve this small amount of information did not support an NRC decision to pursue that course of action. The staff still agrees with that determination.

Advantages:

- Would save staff resources necessary to conduct a rigorous review of dated documents that in some cases have been public for over 35 years.
- Would reaffirm the previous NRC position that available information is not useful enough to support action.
- Would acknowledge that the LPDR collections were not subject to NRC control at the time of previous document reviews, and in fact, that NRC's handling of its material was consistent with policies in place at the time.
- Would require no resources to implement.

Disadvantages:

- May continue public concern that SUNSI material that could be useful to terrorists is embedded in the microfiche collections in the former LPDRs.
- May continue concern that the NRC has been inconsistent with the handling of this material.

Option 2: Review documents in PLL and remove microfiche addresses for documents identified as sensitive

In lieu of Option 1, the staff can take steps to further limit the availability of sensitive information in the public domain. To accomplish this, first the staff must conduct a review of the documents in the PLL. This review will differ from previous document reviews conducted by the NRC in 2001 and 2004 because it will focus on pre-November 1999 documents in the PLL. The previous NRC reviews focused on documents from the ADAMS library which were issued post-November 1999. It should be noted that there are approximately two million documents in the PLL. A subject or document type search done in the PLL to identify documents that are possible SUNSI candidates could potentially identify more than 100,000 documents for review. Based on an average document size and the cost of a subject specialist to review the document, a conservative cost estimate would be approximately \$1,800K and 6.0 Full-Time Equivalents (FTEs) to conduct a review of these identified documents. Given the complexity of the subject matter contained in the microfiche collection, subject specialists in the program offices have traditionally been used to review material for appropriate release to the public. The OIG recommends reviewing documents classified as SUNSI that were included in former LPDRS. The staff, however, did not consider this an option, since there has never been a review of the entire PLL for SUNSI.

Upon completing the review of the documents, the staff can remove the ADAMS accession numbers from citations, or the citations in their entirety, within the PLL for each identified sensitive document. This will not restrict the availability of the document within the microfiche collections at the former LPDRs, but it will remove the readily accessible "roadmap" described in OIG's fourth finding. If this action is taken, it will not restrict the ability of the public to find this information through other means. Other entities, including private information brokers and Federal agencies, have either developed capabilities to provide this information to the public for a fee or are providing this information to the public through their electronic media such as web pages or databases. The staff will not be able to prevent these entities from continuing to provide the information to the public.

Advantages:

- Would limit the availability of SUNSI material in the public domain by making it more difficult to locate.

Disadvantages:

- Would require considerable staff time and unbudgeted resources to identify and isolate individual documents in the microfiche collections.
- May result in only a limited level of public confidence that all SUNSI documents have been identified, given the difficulty of searching a collection like the PLL.
- Would provide limited or no enhancement to the security of NRC-licensed nuclear

facilities given the age of the documents and post-September 11 security enhancements and physical modifications to NRC-regulated facilities.

Option 3: Physical removal of sensitive documents from the microfiche collections at the Federal Depository Library Program (FDLP) libraries and non-FDLP libraries

Option 3 would involve staff effort to retrieve from the former LPDRs documents identified during the completion of Option 2 that should be designated as sensitive in accordance with the NRC's SUNSI criteria. To be clear, Option 3 can only be implemented upon completion of Option 2.

The NRC staff may request, but not direct, that the former LPDRs return the specific microfiche cards containing sensitive documents. Although the seven non-FDLP libraries can refuse this request, the staff believes that our request would be favorably received given our previous interactions with these libraries and the infrequency with which the collections are used.

Former LPDRs that are part of the FDLP must dispose of documents at the direction of the Government Printing Office (GPO) and in accordance with the GPO Information Dissemination Policy Statement 72, "Withdrawal of Federal Information Products from Information Dissemination Collection and Distribution Programs." Recent experience with the GPO suggests that it may require the NRC to copy all of the non-sensitive records co-located on the microfiche with the targeted records and make those non-sensitive records available to the GPO. Depending on the volume of the recall, this could require a considerable investment in staff resources. A reasonable budget estimate for Option 3 will only be possible after completing Option 2.

As a Federal agency, GPO has worked closely with the NRC on the recall of material from the FDLP libraries, most recently for Personally Identifiable Information (PII) information in microfiche collections. GPO takes its stewardship of the FDLP program seriously and has very stringent rules about the recall of material made publicly available. Their procedures are outlined in a six page document on their Web page entitled "Withdrawal of Federal Information Products from GPO's Information Dissemination Program." It requires an agency head or designate to sign a letter to the Superintendent of Documents requesting a recall, including detailed bibliographic information about the product. Upon receipt of this request, GPO will contact the head of the agency to discuss the recall and its potential impact and consider alternative action, costs, any necessary announcements and notifications. The Depository Library Council is notified of the recall as are the professional library associations including the American Library Association, Special Library Association, American Association of Law Libraries, Association of Research Libraries, and the Medical Library Association. A recall of government-issued material is a laborious undertaking and is taken very seriously by the GPO. The process to recall information through the GPO is time consuming and NRC's efforts to isolate the non-sensitive material from the potentially sensitive material will be considerable.

Even if the NRC is successful in securing the return of all of the specific microfiche cards containing sensitive information from the FDLP libraries, the NRC would still not recover all of identified sensitive information in the public domain because microfiche cards were routinely copied and provided to the public, and the agency could not control these private collections. In addition, the staff is aware that at least two collections were provided in their entirety to private citizens when the non-FDLP libraries no longer wished to house them. The staff believes that it is highly unlikely the owners of these two collections would return them.

Advantages:

- Could help allay public concerns that there is SUNSI material available to the public that could potentially harm national security.
- Would demonstrate that the NRC working to control sensitive records.

Disadvantages:

- Would require considerable staff time and unbudgeted resources to isolate individual documents in the microfiche collections and replace all of the microfiche cards so they only contain non-sensitive information.
- May encounter difficulty convincing the GPO to conduct a recall because the material contained on the recalled microfiche may still be available through information brokers and others who may have already copied the information.
- May result in only a limited level of public confidence that all SUNSI documents have been identified, given the difficulty of searching a collection like the PLL.
- Would provide limited or no enhancement to the security of NRC-licensed nuclear facilities given the age of the documents and post-September 11 security enhancements and physical modifications to NRC-regulated facilities.

Option 4: Seek removal of all the microfiche collections, in their entirety, from the public domain.

When the LPDR program was discontinued in September 1999, ownership of the document collections was transferred to the individual libraries where the collections resided. For non-FDLP libraries the NRC could directly request the return of the collections. Previously, the NRC Deputy Chief Information Officer sent letters, dated July 12, 2006, to these libraries expressing the NRC's willingness to accept offers to return the collections and make the necessary arrangements to dispose of them properly. To date, only two of these libraries have decided to return their collections.

For the FDLP libraries that have the microfiche collections, the NRC would have to work with GPO to recover these collections. The GPO will require justification explaining why, after more than 35 years, the NRC wants to deny public access to the information on microfiche. This is especially true if an overwhelming majority of the documents in the microfiche are non-SUNSI.

Based on our recent experience in attempting to retrieve the microfiche containing PII from FDLP libraries, we do not believe the agency would find it easy to convince the GPO to remove the collections.

The resources necessary for Option 4 depend on the manner in which the agency wants to handle the disposition of the microfiche collections. If the collections are disposed of at the LPDR then there will be a cost to NRC for their destruction. However, recent guidance to the staff is to have the collections returned to headquarters. If they are returned to NRC headquarters, then costs will be higher for shipping, storage, and destruction. The cost resulting from one of the libraries that did return its collection to the NRC totaled \$2,017 for shipping and delivery. Assuming that all 68 collections were returned to the NRC, the total shipping cost would be an estimated \$136K. The cost to destroy the collections is approximately \$300 each or \$20K for all 68 libraries, for a total of \$156K and 2 FTE's.

Advantages:

- Would reduce concerns about the issue of sensitive information in the public domain.

Disadvantages:

- Would rely on the voluntary return of these collections since ownership was transferred to the libraries in 1999.
- May be difficult to locate some of the collections because many have been incinerated, removed by the utilities, or transferred to other libraries.
- Would require budget and resources to destroy collections or would require transport costs and space to store returned collections.
- May cause public to perceive NRC action as contrary to its openness goal and may damage credibility.
- May not be able to retrieve collections in the hands of private citizens.
- May increase the value and importance of private collections because they will remain as a source of the targeted information.

Option 5: Disable the finding tool for the microfiche collections: the Public Legacy Library.

One way to limit pinpointing the exact microfiche location of a specific document is to eliminate the finding tool, in this case the ADAMS Public Legacy Library. However, the locations of other non-SUNSI documents would not be available through the PLL if the finding tool was eliminated. Additionally, there are databases similar to the PLL that have been established by members of the public, including information brokers. The NRC has no control over these databases.

Advantages:

- Would limit access to records from the PLL access point only, since records could not

- be located through the PLL by their microfiche address.
- Would require no resources to implement.

Disadvantages:

- Would eliminate the public's ability to use the PLL to locate legacy documents on microfiche.
- Would increase the number of calls to the Public Document Room for information. Based on experience with shutdown of NRC Web site in 2001 and shutdown of public ADAMS server in 2004, a slippage in PDR service levels would result and backlogs of document requests would be created.
- May cause negative publicity; this action could be viewed as contrary to NRC's openness goal, and might damage NRC credibility.

RESOURCES

There are no resource impacts for Option 1 and Option 5.

Resources totaling approximately \$1,800K and 6.0 FTEs would be needed for Option 2.

Resources for Option 3 can be determined only after completing Option 2.

Resources totaling \$156K and 2 FTEs would be needed to support Option 4.

Resources for Options 2, 3, and 4 are not included in the FY 2007 or FY 2008 budgets and if the Commission selects one, or more, of these options, resources would need to be reprogrammed from other lower priority activities in FY 2007 or FY 2008, or would be requested in the FY 2009 budget submission as part of the FY 2009 agency Planning, Budgeting, and Performance Management process (PBPM) process. Also, if the Commission selects Option 3 in addition to Option 2, the staff recommends that the additional resources that would be necessary should be requested as part of the FY 2009 PBPM.