

MEMORANDUM TO: William D. Travers
Executive Director for Operations

Hubert T. Bell
Inspector General

FROM: Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

SUBJECT: INADVERTENT RELEASE OF PROPRIETARY INFORMATION
RELATED TO THE MIXED-OXIDE FUEL FABRICATION FACILITY

On September 29, 2001, the Office of Nuclear Material Safety and Safeguards (NMSS) confirmed that information related to the mixed-oxide fuel fabrication facility (MFFF) submitted by Duke Cogema Stone and Webster (DCS), MFFF applicant, as "Proprietary Information" was inadvertently released to three parties unauthorized to receive such information. We became aware of this possible inadvertent release of information on September 28, 2001. The Proprietary Information consists of technical chemical processing information contained in one of the enclosures to an August 31, 2001, letter from DCS to the Nuclear Regulatory Commission (NRC) in response to an NRC request for information. NMSS staff intended to provide the DCS letter and Non-Proprietary enclosures to four interested members of the public in advance of a public meeting and a pre-hearing conference that were to take place on September 19-21, 2001. Upon confirming this release had occurred, NMSS staff informed DCS and undertook actions to retrieve the document by contacting the three members of the public who received the Proprietary enclosure, explaining the situation and receiving agreement from all to return the Proprietary portion of the document.

At the time of the inadvertent release, the staff had not completed its determination regarding the proprietary nature of the information; however, in order to err on the conservative side, the staff assumed that the information was proprietary. Subsequently, the staff has determined that most of the information is in fact proprietary.

NMSS staff intended to distribute the package internally with the information identified by the licensee as Proprietary Information included and externally with the Proprietary information removed; however, we inadvertently distributed the incorrect package externally. We believe that the factors that contributed to the inadvertent release are:

1. The document was being distributed internally and externally at the same time;
2. Although clearly stated and marked on the cover letter that Enclosure 3 was Proprietary, the yellow document cover, NRC Form 190, "Proprietary Information," was not placed on all of the copies containing the Proprietary Information; consequently, the packages to be distributed looked exactly the same; and

3. We were in a hurry to distribute the document externally to allow sufficient time for members of the public to review the document before the public meeting on September 19, since some of the information in the DCS letter pertained to topics to be discussed at the public meeting.

To assure that such a release does not happen again, we:

1. Will periodically emphasize to the staff the importance of placing the yellow sheets on top of documents containing Proprietary Information, as well as using appropriate document covers for other levels of sensitive and classified information.

Note that on October 30, 2001, all NMSS administrative staff completed an informational briefing on handling of sensitive and classified information, including proprietary information.

2. Discussed the matter with DCS—both DCS and NRC agreed that in future submittals that contain Proprietary Information, the redacted versions and the Proprietary Information will be provided to NRC in separate submittals, as was done by DCS for earlier submittals. Proprietary Information will not be included as part of submittals that have Non-Proprietary enclosures.
3. In addition, although not directly related to the inadvertent release, we will also revise or update NMSS policy for handling Proprietary Information to specify submission at least 30 days in advance of meetings to discuss the material.
4. The staff notes that in the SRM (September 18, 2001) for SECY-01-0143, the Commission approved a proposed revision to 10 CFR 2.790 that clarifies requirements for identification of confidential information sought to be withheld. The proposed rule would add specific working criteria aimed at reducing the administrative burden associated with proprietary determinations and is expected to reduce processing errors by administrative personnel.

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* See previous concurrence

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