

## AMERICAN NUCLEAR INSURERS RECORD RETENTION REQUIREMENTS

### A Historical Overview, Retention Periods, and Current Challenges<sup>1</sup>

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#### INTRODUCTION

ANI provides third party liability insurance coverage for claims alleging offsite bodily injury, offsite property damage, and onsite bodily injury, caused by the nuclear energy hazard. Currently, these coverages are provided via three major policies: Facility Form and S&T (Supplier's and Transporter's) Policies, and Master Worker Policy. The Facility Form Policy provides coverage for claims alleging injury or damages offsite (i.e., offsite bodily injury, offsite property damage). The S&T Policy provides coverage for claims alleging bodily injury both on and offsite and offsite property damage that arise out of the supply of services and products to owners and operators of nuclear facilities. The Master Worker Policy provides coverage for claims alleging onsite bodily injury arising out of nuclear related employment that does not fall within the exclusive remedy of workers compensation.

#### HISTORY

In 1980, following over two decades of nuclear liability claims handling experience, American Nuclear Insurers issued ANI Information Bulletin 80-1A, *Nuclear Liability Insurance Records Retention*. The actual allegations and legal proceedings associated with the evaluation and investigation of nuclear liability claims, which arose from the nuclear energy hazard, confirmed the need to retain records. These claims alleged radiation injury to employees, contractor personnel, visitors and members of the public; and radioactive contamination of offsite property. The purpose of the Bulletin was to outline those records, identified through actual claims experience, critical to claims evaluation and defense of our insureds. Additionally, the Bulletin contained guidance regarding the specific information needed on each type of record. Since its initial issuance, Bulletin 80-1A has been revised five times.

Due to the latency period associated with radiogenic illnesses like cancer and the continuous nature of the nuclear liability insurance policies, ANI has developed very specific and unique record retention periods. The manifestation of illnesses which may lead to third party nuclear liability claims often occurs later in life. These illnesses, and subsequent claims, may occur many years after the worker was alleged to have been exposed to ionizing radiation. They may occur after a nuclear facility is closed. In order for ANI to evaluate and, if necessary, defend these claims, specific records must be retained, retrievable and legible. Therefore, ***“worker” related records must be retained for the life of the Master Worker Policy, plus the subsequent one year discovery period during which claims may be reported. Effluent / environmental records must be retained for the life of the Facility Form Policy, plus the subsequent ten year discovery period during which claims may***

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<sup>1</sup> Presented at 28<sup>th</sup> Annual NIRMA Conference, J.W. Marriot – Las Vegas, August 8-11, 2004

*be reported.* It may be in the insured's own interest to retain the records noted in the Bulletin for a longer period. All radiation protection records which were made under previous regulations should be retained, even though the revised regulations no longer require them to be generated in the future.

Retention of all potentially germane records generated over the complete operating history of a facility is generally not feasible, nor is it possible to predict which specific records might be useful in a given case. Nuclear liability claim experience has indicated the usefulness and relevance of certain records. These records are described in ANI Information Bulletin 80-1A, Revision 5, *Nuclear Liability Insurance Records Retention*. Please note, these records are considered minimum insurance requirements.

Questions frequently arise regarding the legal admissibility of records stored on various media (e.g., hard copy, microfilm, magnetic tape, optical disk, CD, etc.). The courts in a number of jurisdictions (state and federal) have come to accept evidence in various forms. When choosing the storage media for a particular facility, the insured's legal counsel should review applicable laws and rules which address admissibility of such records in civil actions. Because lawsuits involving ANI insureds may be tried in either federal or state courts, the Federal Rules of Evidence as well as state rules of evidence must be considered by Counsel. For multi-state facility locations or owners, the laws and rules of more than one state may be relevant. If both the federal and state rules that might apply recognize such records as admissible, ANI would consider the storage media as appropriate.

In recent years, due to the streamlining of plant processes and the advent of electronic records retention, new challenges face ANI and our ability to properly investigate and evaluate claims. These challenges may be satisfactorily addressed via interdepartmental communications, administrative controls, and adherence to ANI's recommended retention practices.

## **PERIODIC BACKUPS**

During the 1980's and 1990's, nuclear power plants switched over to electronic access control systems for entering the Radiologically Controlled Areas. Approximately four years ago, ANI reviewed the method by which electronic dosimeter (ED) transactions / access control events (e.g., names, Social Security Numbers, ED doses, transaction dates / times, TLD and ED numbers, RWP numbers, Task numbers, etc.) are stored for long term retention. Our review determined that in most cases the facility's Information Technology (IT) department performed some form of backup (e.g., daily, weekly, monthly). In many cases these backups were placed on a rotation schedule and were overwritten. In other cases these backups were stored inappropriately (e.g., desk drawers, file cabinets, etc). In all cases, these backups were performed for disaster recovery purposes, not for long term retention and nuclear liability claims handling purposes. Because the information recorded during these ED transaction / access control events is critical for nuclear liability insurance purposes, these records should be retained in accordance with ANI Information Bulletin 80-1A. This issue represents an increased risk when data management systems are replaced and/or upgraded. The HP, IT, and Records Management departments should coordinate their efforts and establish administrative controls to ensure these electronic records are appropriately retained. At facilities where these situations existed, ANI offered the following recommendation.

Records of ED transactions / access control events should be forwarded to Records Management for long term retention in accordance with ANI Information Bulletin 80-1A, Revision 5, *Nuclear Liability Insurance Records Retention*. These records should be forwarded at least annually and prior to system replacement / upgrade. ANI will accept various forms of storage media if both federal and state rules that might apply recognize such records as admissible. This recommendation applies to historical records as well as the current and future ED transactions / access control events.

## GET RECORDS

A similar concern exists with the electronic records associated with computer based training (CBT). With the advent of computer based General Employee Training (GET), many records that were formally generated and stored as hard copy, under the traditional training programs, are now generated and stored electronically. Examples of these records include: instruction material, CBT examinations, CBT question bank, etc. Approximately two years ago, ANI reviewed the method by which GET CBT records are stored for long term retention. Again the results were mixed. In general the CBT examinations were downloaded and forwarded to Records Management. In most cases, the CBT instructional material and the CBT question bank were not forwarded to Records Management; they resided in the CBT software. In virtually every third party nuclear liability claim ANI has handled, *Failure to Warn of the Hazard* (training) is a primary allegation. Training and training records are critical to nuclear liability claims investigation and evaluation. The Training, IT, and Records Management departments should coordinate their efforts and establish administrative controls to ensure these electronic records are retained in accordance with ANI Bulletin 80-1A. At facilities where the CBT question banks were not retained in accordance with the Bulletin, ANI offered the following recommendation.

The CBT examination question bank should be forwarded to Document Control for long term retention in accordance with ANI Information Bulletin 80-1A, Revision 5, *Nuclear Liability Insurance Records Retention*. All subsequent revisions to the question bank should also be forwarded to Document Control. ANI will accept various forms of storage media if both federal and state rules that might apply recognize such records as admissible.

## RADIATION WORK PERMITS

One objective of the ANI Engineering Inspection Criteria, Section 8.9, Revision 4, *Radiation Work Permits*, is to be able to tie an individual worker to a specific job and to the specific radiological conditions of that job. The intent of this objective is to be able to counter arguments that a particular worker's personal dosimetry was ineffective or faulty and that the exposure could have been many times higher than reported. When a nuclear liability claim involves a worker who was exposed over a number of years, dose reconstructions using area surveys and stay times can be misinterpreted to produce total doses an order of magnitude more than recorded.

Some work control systems (i.e., systems which allow maintenance to be performed using General or Area RWPs) may have insufficient detail to tie workers to their specific job. Experience in litigation makes clear that the lack of consistent cross-reference between the work order and the RWP can be an obstacle to the development of compelling arguments concerning reconstruction of a worker's dose, exact radiological conditions, and the radiological controls in place at the time of the work. Some systems generate records as to who entered the RCA, but the exact purpose of the entry might not be documented. This would further challenge the ability to reconstruct who actually was involved with the work and under what radiological conditions.

It is important to identify other members of the work crew. Their dosimetry may be used for dose comparison purposes. Also, any worker who can be identified as a participant on a particular job may also become a fact witness in future lawsuits.

The ANI RWP criteria are directed to all situations having a potential for claim activity, *irrespective of dose*. This includes all work inside Radiologically Controlled Areas, since claims have been brought by workers with monitored and documented exposures of zero, which in court must be substantiated.

One additional item may hamper ANI's ability to investigate and evaluate worker claims. In most cases, work orders are retained for "*Life of Plant*." In some cases the retention period is much less (e.g., one facility

destroys work orders six weeks after the work is complete). It is rare that work orders are retained for the life of the insurance policy plus the discovery period. This is understandable because a work order is not a radiological document and has not been specifically identified as a critical document in ANI Bulletin 80-1A. However, as noted above, as more facilities streamline their RWP processes, more reliance will be placed on work orders in order to reconstruct an individual's work history. ANI is currently requesting that our insureds perform a self-evaluation to determine if their systems and programs can successfully reconstruct an individual's work history. The next revision to the Bulletin will include the need to retain work orders for the life of the policy plus the discovery period.

### **EFFLUENT / ENVIRONMENTAL ISSUES**

Thus far, the examples provided in this paper have been directed toward liability exposure from worker claims. This is not intended to minimize the importance of ANI Information Bulletin 80-1A to public liability claims. Reconstructing the source term is no less important when members of the public seek to recover damages based on alleged exposure from offsite releases than when workers allege harmful exposure from onsite sources. There have been claims made by members of the public for both bodily injury and damage to their property. The facility must be able to reproduce documentation of effluent releases and the results of environmental monitoring samples (e.g., water, soil, plant and animal, offsite air samplers and TLDs, etc.). Claims of this nature may result from a specific event or following years of routine operations. Claim investigation and evaluation may require reconstruction of doses to the public over many years, including data prior to plant operation.

### **FINANCIAL IMPACT**

The impact of a nuclear liability claim on the records management department may be enormous. The nuclear liability insurance policies are "first-dollar" policies. In other words, there is no deductible. ANI pays for defense costs and loss up to the policy limit. ANI does not, however, pay for document retrieval, copying, assembly, etc. During one recent third party claim, the records management department had to reproduce three million pieces of paper. In a separate claim, involving releases to the environment, the utility hired six full time employees to process records as the litigation stretched over a period of years. As you can see, the financial impact to the utility, and more specifically to the records management department, may be significant.

### **CONCLUSION**

In conclusion, proper records management is critical to favorable claims experience. The records necessary to claims investigation and evaluation must be properly maintained and retained; they must be retrievable and legible. These documents and the appropriate retention practices are described in ANI Information Bulletin 80-1A, Revision 5, *Nuclear Liability Insurance Records Retention*.