

Federal Energy Regulatory Commission
Office of Energy Projects
Division of Dam Safety and Inspections Documents --
Which Ones Are CEII and Which Are Not?

January 12, 2005

On August 3, 2004, the Commission issued Order No. 649, a final rule on CEII. The Hydropower Reform Coalition and the National Hydropower Association expressed concern about inconsistency in claims for CEII treatment. In response, the Commission agreed to provide this additional direction to filers on which information qualifies for treatment as CEII.

CEII is defined as:

Information concerning proposed or existing critical infrastructure (physical or virtual) that:

1. Relates to the production, generation, transmission or distribution of energy;
2. Could be useful to a person planning an attack on critical infrastructure;
3. Is exempt from mandatory disclosure under the Freedom of Information Act; and,
4. Gives strategic information beyond the location of the critical infrastructure.

Only documents that contain information that can be useful to someone planning an attack on a project are CEII. CEII does not mean that the public cannot have safety-related information about the Commission's projects. There are many members of the general public who have legitimate needs for safety-related information about the Commission's dams and projects. CEII is just the Commission's procedure to limit access to CEII to people who are not terrorists and have a legitimate need for the information.

The Commission's Dam Safety Program involves detecting weaknesses in dams and in dam safety programs. Any terrorist or disgruntled employee set on destruction wants to maximize the effect of his action. Knowing the vulnerabilities of a project and failure consequences (impact on people and property; hazard potential classification) would allow a person planning an attack to do the most harm. We strive to safeguard the information that someone could use for destructive purposes by marking it CEII.

Although some may believe the easiest way to protect the public would be to mark all dam safety documents as CEII, it is not practical or reasonable to do so. As a federal agency, the Commission has a responsibility to provide reasonable access to the Commission's public records. That's exactly why CEII was developed following 9/11/01. The

Commission recognized that it had sensitive data easily available to the general public. After 9/11, the Commission restricted access to some previously publicly available information. At the same time, it initiated the process that resulted in the development of the CEII rules, which provide for access to CEII documents by those with a legitimate need for the information who are willing to sign a non-disclosure agreement.

Attached is a table that itemizes the standard dam safety incoming documents by the usual CEII designation each type of document carries. Please note that these are the documents' "usual" designations, not "absolute" ones. The table is provided as a helpful guide.

All Part 12D Independent Consultant Inspection Reports are CEII. That is because they clearly contain strategic information that could be useful to a person planning an attack on a project.

On the other hand, some documents regarding dam safety work are consistently not CEII because they don't contain strategic information that could be useful to a person planning an attack on a project. These include letters that are administrative in nature and do not contain any substance on dam safety issues. Licensees' scheduling letters, extension of time letters, and some response letters normally have no CEII in them.

However, many dam safety documents must be individually assessed to make the correct CEII determination. The key to the correct CEII determination on these documents is in the content. A document that contains any technical data or comments that would assist anyone wanting to attack or disrupt a project should normally be marked CEII. The only way to correctly assign CEII to a document is to read it carefully, with the above CEII definition in mind.

Most of the standard reports submitted by licensees, contain some items that match the CEII definition. That is, because these documents primarily address dam safety, public safety, construction, and all of the technical details related thereto. The only incoming document that is usually not CEII is a Part 12.10(b) incident report. The rest of the incoming documents have to be analyzed, based on individual content. They may contain CEII. For example, a licensee response to an inspection follow-up letter could contain no CEII (e.g. the railing has been replaced and the high grass cut) or be full of CEII (e.g. proposal for analysis of crack in arch dam). There is no way around reading the full document for content before determining the CEII designation. Where practical, CEII should be segregated from non-CEII to afford public access to the non-CEII.

Failure to mark a CEII document as CEII could lead to critical information being in wrong, and potentially destructive hands. Marking a non-CEII document as CEII unnecessarily restricts public access and impairs the Commission's ability to do its job.

Also attached is a flow diagram representing the steps to follow in evaluating each document and determining its CEII classification. The steps are: (1) determine what kind

of document it is; (2) look up the document type in the CEII Designation of Incoming Dam Safety Documents Table and, if CEII or non-CEII, mark it accordingly; and (3) if “May Be CEII,” read the document for content (if there is any technical information it should be marked as CEII). If this process is followed, documents will be marked appropriately.

In summary, the Commission and filers must do three things:

- 1) diligently and correctly identify documents that are CEII and those that are not;
- 2) increase oversight of the CEII marking process; and
- 3) monitor results to ensure accuracy and improved results.

Please use this guidance, the attached “CEII Designation Table” and the “Making CEII Determinations Diagram” to help accomplish this.

Any questions regarding whether or not a particular document should be marked as CEII may be directed to Frank Calcago (202-502-6026), Ken Fearon (202-502-6015) or Justin Smith (202-502-6246). Other questions regarding CEII may be directed to Carol Johnson (202-502-8521).