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December 12, 2000

COMPLAINT AND REQUEST FOR ENFORCEMENT ACTION

By fax and mail

Richard Ratliff, Director
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3189

Alice Rogers
UIC&RW Section
TNRCC
P.O. Box 13087
Austin, Texas 78711-3087

Re: Filings by IEC on its Live Oak County Mines

Dear Mr. Ratliff and Ms. Rogers:

I am writing on behalf of W.H. Hahn and members of his family who own land in and around the Lamprecht and Zamzow uranium mines. Mr. Hahn asked me to write to you because of his difficulties in participating in decisions of TDH and TNRCC on IEC license and permits involving restoration and decommissioning of the Lamprecht and Zamzow mines in Live Oak County, Texas. IEC's actions of making false claims of confidentiality and filing copyrighted documents with the clear intention of frustrating access by others is a serious threat to the legitimate rights of the public and the regulatory process. While TNRCC has recently taken steps to discourage such efforts, TDH's failure to do so is also a serious concern.

First, IEC has filed numerous documents with TDH that are marked as confidential or as not being public records. In response to my clients' open record request, TDH has accepted IEC's claim of confidentiality and referred the requests to the office of the Attorney General. The AG's Office rejected all claims of confidentiality.

In fact, the documents filed by IEC should never have been accepted by TDH with such broad claims of confidentiality. Once they were, TDH should have, at least, determined that some were clearly not the type of documents protected by Texas law and advised IEC that it must remove the

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false claims of confidentiality or be subject to enforcement for filing misrepresentations with the agency.

In fact, TDH and TNRCC have been aware of efforts to limit public access with such broad and false claims of confidentiality. For example, in the case of the application of Texcor for a license from TDH/TNRCC, Mr. Hill claim confidentiality for a large number of documents, including newspaper articles, on behalf of Texcor. The opponents to Texcor's application and the agencies had to spend an enormous amounts of time and resources resolving these false claims. In fact, in his Proposal for Decision, the Hearing Examiner took the time to highlighted this example of false claims.

Such false claims are not only problems for public access, false claims of confidentiality also waste state resources. Extra steps are required of an agency when it accepts confidential documents. Extra steps are required of an agency when it shares such documents with other agencies. Extra steps are required of an agency (and the Attorney General's Office, when there is a request by the public to review such documents.

TDH and TNRCC must take steps to discourage such false claims of confidentiality or they will simply be viewed as assisting the regulated entities in discouraging public access to the information needed to participate in agency decisions..

Second, having had its claims of confidentiality rejected, IEC now has filed documents with a copy-right marks. TDH's refuses to copy such documents and mail them to the public, instead requiring a member of the public, such as Mr. Hahn to travel across the state to review the document. Apparently, TDH claims that a person such as Mr. Hahn can copy the document, if he or she is willing to accept any risk of action for violation of the copyright. (I assume that TDH also cannot make copies of the document for internal use of to send to other regulatory agencies without also risking some action by the person who submitted the document.)

IEC and Mr. Hill have clearly taken these actions knowing that they will limit or delay access to documents that should be easily available to the public and other agencies. By accepting such documents for filing, TDH is allowing IEC to frustrate my clients' participation and is wasting taxpayers funds.

My clients therefore ask that both and TDH and TNRCC, individually or jointly, take the following actions:

1. Refuse to act on or revoke any action related to IEC filing under Mr. Hill's letter of November 22, 2000, i.e. on any draft or final IEC's Decommissioning Work Plan which is marked as copyrighted.

2 . Return the letter and copyrighted documents to IEC advising IEC that the agency cannot accept for filing such a document because of the copyright indication.

3. Refer both this matter and the prior matter (i.e. the filing of the "Confidential Agreement" dated August 10, 2000 and related correspondence from Mr. Hill on August 22, 2000 with attachments, some of which were marked as "not an open record") to the Texas Attorney General to take appropriate civil enforcement action or to advise your agency on options for criminal prosecution under the penal code or other Texas laws covering misrepresentations to a state agency.

This request is made under the Texas Public Information Act, Chapter 401 of the Texas Health and Safety Code, Chapter 27, Texas Water Code and Sections 7.355 Texas Water Code. The latter provision may make TNRCC the lead agency on this complaint.

Thank you for your consideration of these matters.

Sincerely,

Richard Lowerre

xc: The Honorable Judith Zaffirini, State Senator
The Honorable Judy Hawley, State Representative
James W. Morris, III, Open Records Division, Office of the Attorney General 5
Thomas Goddard, Office of General Counsel, Texas Department of Health
Alice Rogers, Permits Division, TNRCC
Don Redman, Legal Services Division, TNRCC
William Cordes, Solicitor, Nuclear Regulatory Commission
Vivian Campbell, State Program Coordinator, Nuclear Regulatory Commission
William Hahn