

2001-0210

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RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

RESPONSE TYPE FINAL PARTIAL

REQUESTER

Stephen M. Kohn

DATE

AUG 30 2001

PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES **D** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **E, F, G** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **E, F, G** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

AMOUNT *

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- You will be billed by NRC for the amount listed.
- None. Minimum fee threshold not met.
- You will receive a refund for the amount listed.
- Fees waived.

* See comments for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed *Mary Jean Poole (for)*

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
G

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
 - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
 - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
 - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
 - The information is considered to be confidential business (proprietary) information.
 - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
 - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
 - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
 - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
 - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
 - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
 - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
 - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
 - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
James E. Dyer	Regional Administrator, Region III	Appendix G	✓		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX D
RECORDS ALREADY AVAILABLE IN THE PDR**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	11/3/1999	ML003676427	Letter from J. Dyer to O. Kingsley transmitting Notice of Violation and Proposed Civil Penalty (4 pages).
2.	11/3/1999	ML003676429	Notice of Violation and Proposed Civil Penalty attached to letter of same date (3 pages)
3.	11/3/1999	ML003676290	Letter from J. Dyer to R. Landrum transmitting Notice of Violation. (4 pages)
4.	11/3/1999	ML003676321	Notice of Violation issued to R. Landrum (2 pages)
5.	11/18/1999	ML003676266	Letter from R. Krich to R. Borchardt requesting OI Report, predecisional enforcement conference transcripts and extension of time for response to NOV. (2 pages)
6.	11/22/1999	ML993300438	Letter from R. Borchardt to R. Krich responding to request for OI report, predecisional enforcement conference transcripts and extension of time (2 pages)
7.	2/16/2000	ML003699790	Response of R. Landrum to Notice of Violation (18 pages)
8.	3/29/2000	ML003702130	Letter from R. Borchardt to R. Landrum acknowledging receipt of response to Notice of Violation. (3 pages)
9.	6/12/2000	ML003723145	Letter from Frank Miraglia to ComEd transmitting Order Imposing Civil Penalty (8 pages)
10.	7/11/2000	ML003736924	Letter from R. Krich to Director, Office of Enforcement requesting an extension to the NOV response due date (1 page)
11.	8/11/2000	ML003740947	Letter from R. Krich to Director, Office of Enforcement transmitting ComEd payment of civil penalty (2 pages)
12.	8/17/2000	ML003742367	Letter from J. Dyer to R. Landrum withdrawing NOV issued to Landrum on November 3, 1999 (4 pages)

13. 03/26/98 9805080045

2.206 Petition from M. Kohn: Peititon to Correct
Illegal Restraint on Communication with NRC and to
Rectify a Current Chilling Effect on the Reporting of
Safety Concerns. (25 pages)

**APPENDIX E
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	Summary of Licensee's Response to Violation and NRC's Evaluation of Response (1 page)
AMS No. RIII-99-A-0129		
2.	Undated	Document Serial List AMS No. RIII-99-A-0129 (1 page)
3.	Undated	Identification sheet, serial # 1 (1 page)
4.	Undated	Allegation Summary of Concerns, serial # 2 (1 page)
5.	07/29/99	Conversation record, serial #4 (1 page)
6.	07/29/99	Memorandum from J. Hopkins to B. Jorgensen re: receipt of new allegation, serial # 5 (1 page)
7.	08/02/99	ARB minutes, serial # 6 (2 pages)
8.	08/03/99	Letter from R. Doornbos to R. Robarge regarding Allegation no. RIII-99-A-0129. (2 pages)
9.	08/26/99	Memorandum from J. Hopkins to B. Jorgensen re: review of DOL-OSHA Area Director's decision, serial #9 (1 page)
10.	08/30/99	Memorandum from B. Jorgensen to J. Hopkins re: review of DOL area director's decision, serial # 10 (1 page)
11.	09/07/99	Note from J. Heller to file re: telephone conversation with DOL, serial # 11 (1 page)
12.	12/30/99	Memorandum from B. Jorgensen to A. Kock re: review of DOL action/closure document, serial # 14 (1 page)
13.	01/24/00	ARB minutes (3 pages)
14.	01/27/00	Letter from C. Pederson to individual re: closure of concern, serial # 16 (5 pages)

AMS No. RIII-00-A-0127

15. Undated Document Serial List AMS No. RIII-00-A-0127 (1 page)
16. Undated Identification sheet, serial # 1 (1 page)
17. Undated Allegation Summary of Concerns, serial # 2 (1 page)
18. Undated DOL Status, serial # 10 (1 page)
19. Undated Memorandum from A. Kock to File re: DOL Status, serial # 15, (1 page)
20. 06/30/00 Memorandum from A. Kock to G. Shear re: Division review of complaint, serial # 4 (1 page)
21. 06/30/00 Memorandum from A. Kock to File re: attempted contact with CI, serial # 8 listed [actual serial # 5], (1 page)
22. 07/03/00 Memorandum from A. Kock to File re: contact with CI, serial # 6 (1 page)
23. 07/03/00 Memorandum from A. Kock to G. Shear re: review of DOL complaint, serial # 7 (1 page)
24. 07/10/00 Memorandum from B. Jorgensen to A. Kock re: review of DOL complaint, serial # 12 (1 page)
25. 07/11/00 Memorandum from A. Kock to B. Jorgensen re: review of DOL area director's decision, serial # 9 (1 page)
26. 07/12/00 Memorandum from B. Jorgensen to A. Kock re: review of DOL area director's decision, serial # 13 (1 page)
27. 07/17/00 Initial ARB, serial # 11 (3 pages)
28. 07/20/00 Letter from J. Heller to individual, serial # 14 (3 pages)
29. 08/22/00 Memorandum from A. Kock to B. Jorgensen re: review of DOL documents, serial # 18 (1 page)
30. 08/25/00 Memorandum from B. Jorgensen to A. Kock re: review of DOL documents, serial # 19 (1 page)
31. 10/12/00 Letter from C. Pederson to individual re: closure of concern, serial # 21 (5 pages)
32. 02/13/01 Closure information for RIII-2000-A-0127 (1 page)
33. 02/13/01 Closed case chronology, RIII-2000-A-0127 (3 pages)

ENFORCEMENT

34. Undated Priority Enforcement Action Sheet (1 page)
35. Undated Priority Enforcement Action Sheet (1 page)
36. Undated Priority Enforcement Action Sheet (1 page)
37. 06/23/99 Notice of Significant Licensee Meeting (2 pages)
38. 07/20/99 Letter to O. Kingsley from J. Dyer, re: Notice of Violation (NRC Office of Investigations Report No. 3-98-017) (6 pages)
39. 08/30/99 Email to B. Clayton, C. Pederson, J. Caldwell..... from C. Weil, re: Resetting Clock for Several Enforcement Cases (2 pages)
40. 08/30/99 Email to B. Berson, B. Jorgensen, C. Weil, C..... from B. Clayton, re: Fwd: NOV's to Individuals re H&I (1 pages)
41. 12/08/99 Email to C. Weil from G. Cant, re: IA-99-052, Response to request for Additional Documents (1 page)
42. 12/08/99 Email to C. Weil from D. Dambly, re: IA-99-052, Response to request for Additional Documents (1 page)
43. 12/09/99 Email to C. Weil from C. Pederson, re: IA-99-052, Response to request for Additional Documents (1 page)
44. 12/10/99 Email to J. Fitzgerald from G. Cant, re: Copy of OI Report (1 page)
45. 03/14/00 Letter to R. Krich from R. Borchardt, re: request for Withholding Information from Public Disclosure (Zion Nuclear Power Station, Units 1 and 2) (2 pages)

**APPENDIX F
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	Letter to O. Kingsley from C. Pederson (5 pages)
2.	Undated	Letter to O. Kingsley from C. Pederson; Subject: Predecisional Enforcement Conference (6 pages)
3.	Undated	Memo to B. Clayton from R. Caniano; Subject: Review of OI Investigation Zion: Alleged Discrimination Against a Senior Reactor Operator for Reporting Safety Concerns (3 pages)
4.	Undated	Memo to B. Clayton from R. Caniano; Subject: Review of OI Investigation Zion: Alleged Discrimination Against a Senior Reactor Operator for Reporting Safety Concerns (1 page)
5.	Undated	Memo to B. Clayton from R. Caniano; Subject: Review of OI Investigation Zion: Alleged Discrimination Against a Senior Reactor Operator for Reporting Safety Concerns (1 page)
6.	Undated	Synopsis (1 page)
7.	11/02/98	Memo to B. Clayton from R. Caniano; Subject: Review of OI Investigation Zion: Alleged Discrimination Against a Senior Reactor Operator for Reporting Safety Concerns (1 page)
8.	05/xx/99	Letter to O. Kingsley from C. Pederson (3 pages)
9.	06/09/99	Notice of Significant Meeting (1 page)
10.	08/24/99	Post-Enforcement Conference Coordination Meeting Agenda (1 page)
11.	8/24/1999	EA Request & Enforcement Strategy Form for Zion, documents decision to cite a Severity Level II violation with a civil penalty of \$110,000 (2 pages)
12.	2/18/2000	EA Request & Enforcement Strategy Form for Zion, documents decision impose the civil penalty after review of licensee's response (1 pages)
13.	2/24/2000	Letter from R. Krich to Director, Office of Enforcement providing a correction to response to Notice of Violation and Proposed Imposition of Civil Penalty. (4 pages)
14.	3/14/2000	Letter from R. Borchardt to R. Krich approving request to withhold ComEd's NOV and Proposed Civil Penalty response due to privacy information contained in the response (2 pages)
15.	3/17/2000	EA Request & Enforcement Strategy Form for Zion, documents panel review of draft order imposing the civil penalty (1 pages)

16. 6/12/2000 Notification of Significant Enforcement Action to notify Commission of pending Imposition of a civil penalty (1 page)
17. 6/12/2000 Memo from J. Luehman to D. Meyer forwarding copies of Order Imposing Civil Monetary Penalty for the *Federal Register* (2 pages)
18. 8/14/2000 Accounting receipt for \$110,000. (1 page)
19. 8/18/2000 Letter from J. Luehman to R. Krisch acknowledging receipt of civil penalty payment (2 pages)

**APPENDIX G
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Draft letter to Individual; Subject: Predecisional Enforcement Conference (2 pages) (EX. 7C)
2.	Undated	Draft letter to Individual; Subject: Predecisional Enforcement Conference (3 pages) (EX. 7C)
3.	Undated	Draft letter to Individual; Subject: Predecisional Enforcement Conference (3 pages) (EX. 7C)
4.	Undated	Draft letter to Individual from C. Pederson (3 pages) (EX. 7C)
5.	Undated	Draft letter to Individual from C. Pederson (3 pages) (EX. 7C)
6.	Undated	Draft letter to Individual from C. Pederson (3 pages) (EX. 7C)
7.	Undated	Letter to C. Pederson from individual (1 page) (EX. 7C)
8.	05/18/99	Internet People Search Results (1 page) (EX. 7C)
9.	06/07/99	Email to B. Jorgensen, J. House from C. Weil re: Zion Employment Discrimination Case (EA 98-518) (1 page) (EX. 7C)
10.	06/10/99	Letter to individual from C. Pederson, re: Predecisional Enforcement Conference (NRC Office of Investigations Case No. 3-1998-012) (7 pages) (EX 7C)
11.	07/07/99	Agenda - Predecisional Enforcement Conference (1 page) (EX. 7C)
12.	10/29/99	Internet People Search Results (1 page) (EX. 7C)
13.	11/03/99	Letter to individual from J. Dyer, re: Notice of Violation (6 pages) (EX. 7C)
14.	11/03/99	Letter to individual from J. Dyer, re: Notice of Violation [another version of above document with fax transmittal information] (6 pages) (EX. 7C)
15.	11/24/99	Letter to J. Dyer from individual (3 pages) (EX. 7C)
16.	12/15/99	Letter to individual from J. Dyer, re: Request for Documents

- (4 pages) (EX. 7C)
17. 08/17/00 Letter to individual from J. Dyer, re: Withdrawal of Notice of Violation (NRC Office of Investigations Report No. 3-1998-012) (2 pages) (EX. 7C)
 18. 08/17/00 Letter to individual from J. Dyer, re: Withdrawal of Notice of Violation (NRC Office of Investigations No. 3-1998-012) [another version of above document with concurrence] (4 pages) (EX. 7C)
 19. 08/17/00 Letter from J. Dyer to individual re: Withdrawal of Notice of Violation (2 pages) (EX. 7C)
 20. 09/29/00 Letter to individual from B. Clayton, re: Request for Additional Correspondence (2 pages) (EX. 7C)
 21. 06/04/99 Letter to H. Clayton from Individual (2 pages) (EX. 7C)
 22. 06/10/99 Letter to Individual from C. Pederson, re: Apparent Violation of Employee Discrimination Requirements (NRC Office of Investigations Report No. 3-1998-012) (10 pages) (EX. 7C)
 23. 09/03/99 Email to C. Weil from S. Rothstein, re: Individual (1 page) (EX. 7C)
 24. 11/18/99 Letter to R. Borchardt from R. Krich, re: requests for NRC Office of Investigations Report, Predecisional Enforcement Conference Transcripts and Extension of Time for the Due Date of the responses to the Notice of Violation and Proposed Imposition of Civil Penalty (2 pages) (EX. 7C)
 25. 11/22/99 Letter to R. Krich from R. Borchardt, re: Requests for Documents and Extension of Time to Respond to Enforcement Actions (2 pages) (EX. 7C)
 26. 12/07/99 Letter to R. Krich from B. Clayton, re: request for Documents (1 page) (EX. 7C)
 27. 01/04/00 Letter to R. Krich from R. Borchardt, re: Request for Documents (2 pages) (EX. 7C)
 28. 01/24/00 Email to B. Clayton, B. Jorgensen, C. Pederson, from C. Weil, re: IA 99-052, Request for Extension of Time for Response (1 page) (EX. 7C)
 29. 01/27/00 Letter to C. Weil from D. Stenger, re: Notice of Violation (NRC Office of Investigations No. 3-1998-012) (2 pages) (EX. 7C)

30. 02/16/00 Reply of Individual to Notice of Violation (Redacted Version) (19 pages) (EX. 7C)
31. 02/17/00 Fax from Hopkins & Sutter to J. Dyer, re: Notice of Violation - IA 99-052 (11 pages) (EX. 7C)
32. 02/18/00 Letter to Document Control Desk from D. Stenger, re: Notice of Violation - IA 99-052 (2 pages) (EX. 7C)
33. 03/29/00 Letter to Individual from J. Dyer, re: Response to Notice of Violation (3 pages) (EX. 7C)
34. 08/17/00 Letter to Individual from J. Dyer, re: Withdrawal of Notice of Violation (NRC Office of Investigations No. 3-1998-012) (2 pages) (EX. 7C)