



# RADIOACTIVE WASTE MANAGEMENT ASSOCIATES

January 30, 2003

FOIA/PA Appeal  
FOIA/PA Officer  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

## FOIA/PA REQUEST

Case No: 2003-009A  
Date Rec'd: 2-7-03  
Action Off: Brown  
Related Case: 2002-0385

RE: FOIA/PA Appeal: FOIA/PA 2002-0385

Dear Sir/Madam:

This is an appeal of a response I received from a Freedom of Information Act (FOIA) Request that I filed on August 9, 2002, that was assigned the above-referenced numbers. In my request, I sought --

“ copies of all documents and correspondence including emails and records of phone conversations produced by the Nuclear Regulatory Commission or its contractors regarding the Baltimore Tunnel fire, July 18, 2001.

In particular, I sought

“...the report and/or meeting notes, prepared by the National Institute of Standards and Technology (NIST) for the Nuclear Regulatory Commission that discuss the temperature and duration of the Baltimore Tunnel fire, including all correspondence, emails and phone logs between the NRC and NIST..”

On January 16, 2003, in the NRC's final response to my request, Martin Virgilio, Director, NMSS, denied release of the "Draft report: Numerical Simulation of the Howard Street Tunnel Fire, Baltimore, Maryland, July 2001," under exemption 5, predecisional information.

We repeat our request for both the draft and final NIST reports. If, under exemption 5, these documents cannot be released in their entirety, we request that the basic facts, including charts, tables and computer outputs be released.

We further request that Figure 17, that the NRC requested be deleted from the draft showing "holes in box cars," also be released (Memo from C Bajwa, NRC to K McGratten, NIST, dated around Aug 1, 2002).

Marvin Resnikoff, Ph.D. ♦ Senior Associate

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We further request that the "Preliminary Report by PNNL re: thermal analysis," dated 4/11/02, and subsequent reports by PNNL on the same subject be released in their entirety.

The FOIA, as implemented by 10 CFR § 9.19(a), requires that facts contained within even a draft document must be segregated and disclosed unless they are 'inextricably intertwined' with exempt portions. *Ryan v. Department of Justice*, 617 F.2d 781, 790-91 (D.C. Cir. 1980). The basic data, such as the fire temperature, duration and impact on a shipping cask, tunnel dimensions, results of computer runs by NIST and PNNL and so forth, can easily be segregated from exempt predecisional information.

The FOIA law further provides that a document exempt from mandatory disclosure under the FOIA shall nonetheless be released to the public, whenever an agency determines that disclosure is not contrary to federal law and in the public interest. As you are well aware there is considerable local and national interest in this study and this is precisely why it is being withheld. Radioactive Waste Management Associates (RWMA) is a technical consulting firm working on behalf of the State of Nevada on transportation issues. The State and the Congress are vitally concerned with the safe transportation of irradiated fuel. The information in these reports will be analyzed by RWMA and released to the State of Nevada, Congress and the general public.

Thus, under the Freedom of Information law, we are requesting that the NIST and PNNL reports be released in their entirety. In the alternative, we request that the basic data be segregated and released at this time while the NRC reviews its policy and decision-making obligations.

I request a response within twenty (20) working days of receipt of this appeal.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Marvin Resnikoff", written in dark ink.

Marvin Resnikoff