

HARMON, CURRAN, SPIELBERG & EISENBERG, LLP

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May 15, 2003

FOIA/Privacy Act Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-6 D8
Washington, D.C. 20555-0001

BY E-MAIL TO: foia@nrc.gov

Subject: Freedom of Information Act Request

Dear Madam/Sir:

On behalf of the San Luis Obispo Mothers for Peace ("SLOMFP") and the Union of Concerned Scientists ("UCS"), and pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., I hereby request that you provide me with copies of the following documents:

1. Any and all documents that identify "stakeholders," as the term is used in an April 29, 2003, NRC press release entitled "NRC Approves Changes to the Design Basis Threat and Issues Orders for Nuclear Power Plants to Further Enhance Security" (document can be found on NRC website, www/nrc.gov);
2. Any and all documents that identify or describe the NRC's definition of the term "stakeholder," as the term is used in the above-referenced April 29, 2003, press release;
3. Any and all documents that identify the date and nature of any interaction(s) the Nuclear Regulatory Commission has had with stakeholders, as referred to in the above-referenced April 29, 2003, press release;
4. Any and all documents that reflect or otherwise discuss the nature of any clearance held by any and all stakeholders, as referred to in the above-referenced April 29, 2003, press release;
5. Any and all documents that reflect or otherwise discuss the clearance level required for any interactions identified in response to paragraph 3 above;
6. Any and all documents that discuss any changes, since September 11, 2001, in

FOI/PA REQUEST

Case No: 2003-0282
Date Recd: 5-16-03
Action Off: Brown
Related Case: _____

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the NRC's interpretation of what portion of the DBT constitute safeguards information;

7. Any and all documents that identify the individuals or NRC offices that made determinations regarding what aspects of the revised DBT constitute safeguards information.

If, for any reason, you deny this request or any portion thereof, for each document denied, please identify the statutory and/or regulatory exemption on which you rely, and the reason that it is applicable in this instance.

Fee Waiver Request. Pursuant to 10 C.F.R. § 9.41, SLOMFP and UCS hereby request a waiver of any applicable searching or copying fees. In support of this request, SLOMFP and UCS provide the following information:

1. SLOMFP are non-profit organizations which publicly disseminate information regarding nuclear safety issues, free of charge. Neither organization has any commercial interest in the requested information.
2. The purpose of this request is to obtain information on the degree to which the NRC has included public stakeholders in its post-9/11 deliberations regarding changes to the DBT, the balance between consultation of the public and consultation of the nuclear industry, changes in the NRC's criteria for excluding the public from its deliberations on DBT-related issues, and the consistency with which the NRC has applied its criteria for the protection of DBT-related information. To date, SLOMFP's and UCS's experience has been that the NRC is not consulting the affected members of the public regarding necessary post-9/11 improvements to nuclear facility designs, but has relied almost exclusively on the nuclear industry. For example, while the NRC has consulted industry "stakeholders" for recent changes to the DBT for nuclear power plants, the NRC has refused SLOMFP's request to prepare an Environmental Impact Statement ("EIS") for a proposed Independent Spent Fuel Storage Installation ("ISFSI") at the Diablo Canyon nuclear power plant.¹ The NRC Commissioners also denied a petition by SLOMFP to improve protection of both the Diablo Canyon nuclear power plant and the proposed ISFSI before licensing the ISFSI.² In publishing its notice of DBT improvements, the NRC also significantly narrowed the scope of DBT-related information that is released to the public.

¹ *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-01, 57 NRC 1 (2002).

² *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230 (2002).

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SLOMFP and UCS continue to seek security-related improvements to nuclear facilities, and to hold the NRC accountable for the adequacy of its response to the events of September 11, 2001. For instance, on April 29, 2003, SLOMFP and UCS jointly filed a petition for rulemaking with the NRC Commissioners, seeking changes to NRC regulations in order to provide better protection against radiological sabotage at U.S. nuclear power plants.

The requested information will assist SLOMFP and UCS in evaluating the following three factors: (a) the extent of the imbalance between the NRC's consultation of the nuclear industry and its consultation of the affected public, (b) the extent to which the NRC has expanded its interpretation of what DBT-related information constitutes protected safeguards information, (c) whether the NRC is making appropriate or consistent use of safeguards classifications in order to preclude public access to sensitive information. Through analysis and publication of this information, SLOMFP and UCS hope to increase the NRC's level of accountability to the members of the public whose interests it is required to protect.

3. SLOMFP and UCS plan to extract all of the above-described information from responsive documents provided by the NRC, and prepare a thorough analysis of the three factors described in paragraph 2 above.

4. SLOMFP and UCS will publish their analyses of the requested information in their newsletters, which are provided free to members and are circulated widely in the general public. SLOMFP and UCS will also disseminate the information to the press. The information will be used to enhance public understanding of the degree to which the NRC has balanced public views against nuclear industry views in making important decisions related to public safety in the post-9/11 environment.

5. SLOMFP and UCS believe that the growing imbalance between the level of access afforded by NRC to the general public and the nuclear industry to the decisionmaking process regarding post-9/11 security measures is not well-understood by the general public. The requested information will be helpful in developing public awareness of the need to maintain a healthy balance between the access and influence that NRC affords the nuclear industry, and the access and influence that it affords the affected public.

6. SLOMFP has about 3,000 members who receive a monthly newsletter. UCS has 61,000 members, who receive regular reports on nuclear safety issues. Both organizations have an ongoing relationship with the press, and regularly circulate information to the press regarding safety issues at nuclear facilities. In addition, both organizations have relationships with other environmental organizations that cooperate with them in the publication of important information.

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7. The intended means of dissemination of the information is through the publication of SLOMFP's and UCS's newsletters and circulation of the information to the press.

I look forward to receiving your response within 20 working days, as required by the FOIA.

Sincerely,

Diane Curran

Counsel to SLOMFP and UCS