



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 10 1986

MEMORANDUM FOR: Joseph O. Bunting, Chief
Policy and Program Control Branch

FROM: Kenneth L. Kalman
Regulatory Requirements Section
Policy and Program Control Branch

SUBJECT: REPORT ON NOVEMBER 25, 1986 MEETING AT THE FEDERAL
TRADE COMMISSION TO DISCUSS NEGOTIATED RULEMAKING

On November 25, 1986, John Surmeier, Chip Cameron (OGC), Don Grimsley (DRR), Juanita Beeson (DRR) and I met with Assistant Director Gary Laden and Staff Attorney David Koch of the Federal Trade Commission (FTC), Division of Marketing Practices. Mr. Laden and Mr. Koch discussed their experiences with the FTC negotiated rulemaking on Informal Dispute Settlement Procedures and their use of the Conservation Foundation as prime contractor in their rulemaking.

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State still a key player in nuclear dump issues

By Pat Stenson
Post-Crescent staff writer

Wisconsin continues to be a key player nationally in nuclear waste dump issues. Party to litigation challenging the Department of Energy, Wisconsin lost one battle in the 9th U.S. Circuit Court of Appeals in San Francisco Thursday.

However, this week Wisconsin embarked on guiding the administrative process which will govern the licensing of future nuclear waste sites.

Thursday's appeals court decision regarding use of the Nuclear Waste Fund for litigation will affect Wisconsin "but I don't know how much," said Carl Sinderbrand, Wisconsin Department of Justice, this morning.

The state has always used its own funds

to fight the DOE on disposal site location. Jim Kleinhaus, executive director of the state Radioactive Waste Review Board, said this morning. But the states of Washington and Nevada, two of the three finalists for the nation's first permanent disposal site of high-level nuclear waste and spent fuel, have used the fund for litigation, a practice challenged by DOE. The appeals court determined states challenging their designation by the federal government as a potential nuclear waste dump site can't bill the government-supervised Nuclear Waste Fund for the cost of their lawsuits.

"We have always supported the stance of Nevada and Washington," Kleinhaus said, "but we have never used those funds. The state Department of Justice has always represented us. We have always used Wisconsin funds."

Sinderbrand was in Washington, D.C., Thursday representing the state at the organizational meeting of the Nuclear Regulatory Advisory Committee. Wisconsin is a partner with Minnesota in the effort.

"NRC realizes that the licensing procedure would be far and away the largest administrative case in history of U.S. Involving millions and millions of documents," said Kleinhaus.

Wisconsin is among about 15 parties to have voice in developing the licensing process, Sinderbrand said this morning.

"What is the process going to be? From the NRC perspective there are licensing deadlines, by statute three years, and NRC is concerned they can't make that. From our perspective there will be an enormous volume of information generated. The issue is how do we access that?"

Continued on page 2

NUKE dump...

Continued from page 1

There will be hundreds of thousands of perhaps millions of pages of documents, proceeding NRC is concerned they can't within statutory limits," Sinderbrand said. "We are talking about an electronic document retrieval — a nationalized computer system."

"Our interest relates to a couple of issues. We have had difficulty historically with the DOE getting information. We are finding that information available in so many different forms and in different locations that it is hard to gain access to the things we need access to. Another issue is how to cover the cost of this electronic document system which is going to be so expensive to access."

"Our other interest is in this first repository to the extent that it is successful it will be used for the second repository for which we are a candidate."

In any case, Wisconsin is currently a "corridor" state for transportation of high level nuclear waste to the state of Washington given current rail and highway routes. "By virtue of that we are affected by we are not eligible for funding as an 'affected' state. Will it be fiscally impossible for us to participate?"

In the San Francisco case, Wisconsin intervened as a petitioner on the side of using the Nuclear Waste Fund, collected by the federal government from producers of nuclear power, for litigation, Kleinhaus said.

Oral arguments on that suit were held Feb. 12 and apparently we lost on that one which is not unusual because when you're suing a federal agency you realize federal courts are likely to rule in their favor."

"It was our position the state's right to review is right to challenge especially where that challenge is authorized by statute. The question which I can't answer at this juncture is where the court draws the line on what is litigation," Sinderbrand said.

Currently there are about 30 suits pending on the nuclear waste issue and most are pending in the San Francisco court. Of those suits Wisconsin has intervened in four, Klein-

haus said to Hanford, Wash., Yucca Mountain, Nev., and an area near Hereford, Texas.

Federal law has set a 1988 deadline for operation of the first site. Draft plans for detailed study of the sites are due from the DOE next January.

Separate lawsuits are pending by a number of states, environmental groups and others, challenging procedures used in selecting the sites, as well as the department's decision to suspend the search for a second site.

The Nuclear Waste Fund, collected by the federal government from producers of nuclear power, pays the states' cost in evaluating their potential sites and the impact nuclear waste disposal would have on the area. But the court, upholding a DOE decision, said the fund is not available to pay for the states' lawsuits against the government.

Federal law makes the fund money available for "review" of the department's activities, but this is "limited to a state's independent evaluation of siting activities and does not encompass a court's review," said Judge Mary Schroeder, writing for a unanimous three-member panel.

"If we ever become eligible again for federal funding as an affected state — hopefully we will not — at that time this will have an impact on us," Sinderbrand said.

It is Wisconsin's position as a second-round state that put it on the advisory committee. NRC is trying to establish procedural rules in a very complex area "where there is generally a small or discrete number of interested parties they get all those parties together in attempt to negotiate an agreement," Sinderbrand said. "They try to get balance of effective interests."

Howard Bellman of Madison representing the Conservation Foundation has been hired by the NRC to facilitate and mediate the process as a neutral party, Kleinhaus said. The committee is called the High Level Waste Licensing Support System Advisory Committee.

Licensing procedures to look at the technical, socio-economic and other factors will be a massive administrative project, Kleinhaus said. "Just as building two reactors will

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GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-8550

MIDWEST OFFICE
104 E. WISCONSIN AVENUE
APPLETON, WISCONSIN 54911-4897

September 24, 1987

FREEDOM OF INFORMATION
ACT REQUEST
FOIA-87-660
Rec'd 10-5-87

FREEDOM OF INFORMATION ACT REQUEST

Director
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20210

TO WHOM IT MAY CONCERN

Pursuant to the Freedom of Information Act (FOIA, 5 U.S.C. 552,) the Government Accountability Project (GAP) requests copies of any and all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, computer runoffs, and any other data compilations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the Nuclear Regulatory Commission hiring Howard Bellman of Madison, Wisconsin, to facilitate and mediate the procedural rules of licensing procedure process as a neutral party. This committee is called the High Level Waste Licensing Support System Advisory Committee. (see attached article.

This request includes all agency records as defined in 10 C.F.R. 9.3a(b) and the NRC Manual, Appendix 0211, Parts 1.A.2 and A.3 (approved October 8, 1980) whether they currently exist in the NRC official, "working" investigative or other files, or at any other location, including private residences.

If any records as defined in 10 C.F.R. 9.3a(b) and the NRC Manual, supra, and covered by this request have been destroyed and/or removed after this request, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken relevant to, generated in connection with and/or issued in order to implement the action(s).

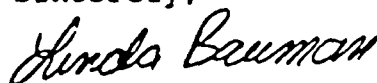
GAP requests that fees be waived, because "finding the information can be considered as primarily benefitting the general public, "5 U.S.C. 552 (a) (4) (a). GAP is a non-profit, non-partisan public interest organization concerned with honest and open government. Through public outreach, the Project promotes whistleblowers as agents of government accountability. Through its Environmental Whistleblower Clinic, GAP offers assistance to local public interest and citizens groups and intervenors in the concern for safety at nuclear power plants.

We are requesting this information as part of an ongoing monitoring project of the NRC's efforts to protect public health and safety at and near nuclear processing plants and radioactive waste facilities.

For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your response to this request within ten (10) working days.

Sincerely,



Linda Bauman
FOIA Coordinator
Midwest Office

Response to this request should be mailed to the Midwest Office:

104 E. Wisconsin Avenue -B
Appleton, Wisconsin 54911-4897



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER IS:	
FOIA-87-660	
RESPONSE TYPE	
FINAL	<input checked="" type="checkbox"/> PARTIAL
DATE	
OCT 29 1987	
DOCKET NUMBER(S) IF APPLICABLE	

REQUEST BY Ms. Linda Bauman

PART I. - RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- Its agency records subject to the request have been located.
- Its additional agency records subject to the request have been located.
- Agency records subject to the request that are identified in Appendix _____ are already available for public inspection and copying in the NRC Public Document Room, 177 H Street, N.W., Washington, DC.
- Agency records subject to the request that are identified in Appendix A are being made available for public inspection and copying in the NRC Public Document Room, 177 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- The proprietary version of the proposal that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 177 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 177 H Street, N.W., Washington, DC
- Agency records subject to the request are enclosed. Any applicable charge for copies of the records provided and payment procedures are noted in the comments section.
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- In view of NRC's response to this request, no further action is being taken on appeal later dated _____

PART II.A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

- Certain information in the requested records is being withheld from public disclosure pursuant to the FOIA exemptions described in and for the reasons stated in Part II, sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 177 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

Comments

_____, DIRECTOR, DIVISION OF PLANS AND RECORDS

Ronnie H. Hinshley

PART II B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices B are being withheld in their entirety or in part under FOIA Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.5(a) of NRC Regulations.

1. The withheld information is properly classified pursuant to Executive Order 12366 (EXEMPTION 1)
2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (EXEMPTION 2)
3. The withheld information is specifically exempted from public disclosure by statute indicated: (EXEMPTION 3)

Section 141-146 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).

4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated: (EXEMPTION 4)

The information is considered to be confidential business (proprietary) information.

The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence from a foreign source pursuant to 10 CFR 2.790(d)(2).

5. The withheld information consists of interagency or intra-agency records that are not available through discovery during litigation. Disclosure of predicational 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 predicational information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predicational process of the agency. (EXEMPTION 5)

6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (EXEMPTION 6)

7. The withheld information consists of investigatory records compiled for law enforcement purposes and is being withheld for the reason(s) indicated: (EXEMPTION 7)

Disclosure would interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (EXEMPTION 7(A))

Disclosure would constitute an unwarranted invasion of personal privacy (EXEMPTION 7(C))

The information consists of names of individuals and other information the disclosure of which would reveal identities of confidential sources. (EXEMPTION 7(D))

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.9 and/or 9.15 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 persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Files and Records, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EDO
Mr. James P. Murray	Deputy General Counsel for Hearings & Enforcement	Appendix B	XX	

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

APPENDIX A

RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	undated	Resume of Mr. Howard S. Bellman. (4 pages)

APPENDIX B

RECORDS TOTALLY WITHHELD

Exemption (5)

1. 1/22/87 Conservation Foundation, Support for Regulatory Negotiation. (34 pages)
2. 1/15/87 Chip Cameron, note on January 14, 1987, contract negotiating session with the Conservation Foundation. (4 pages)
3. 1/7/87 F. X. Cameron, comments on Conservation Foundation Proposal. (5 pages)
4. 12/22/86 Conservation Foundation, Support for Regulatory Negotiation. (30 pages)
5. 12/4/86 Mark Flynn, Notification of Contract Execution. (14 pages)
6. 6/1986 NRC, Statement of Work for Support for Negotiated Rulemaking. (15 pages)
7. 1/14/87 F. X. Cameron, Handwritten notes on contract negotiations with the Conservation Foundation. (11 pages)
8. Undated Chip Cameron, Contractor Support-HLW Negotiated Rulemaking. (3 pages)
9. Undated Chip Cameron, HLW Negotiated Rulemaking - Implementation Status. (5 pages)
10. 9/30/86 Memo for Eleni Davis from Kenneth L. Kalman, subject: Transmittal of CEQ Justification and Revised SOW. (16 pages)
11. 12/10/86 Memo for Joseph O. Bunting from Kenneth L. Kalman, subject: Report on November 25, 1986 Meeting at the Federal Trade Commission to Discuss Negotiated Rulemaking. (2 pages)
12. 2/5/87 Memo for Joseph O. Bunting from F. X. Cameron, subject: Conservation Foundation Contract for Negotiated Rulemaking. (1 page)
13. Undated Note to John Surmeier from Ken Kalman, subject: Telecon with Ralph Avery Regarding Contract for NRM. (1 page)
14. 7/3/86 Note to Joe Bunting through John Surmeier from Chip Cameron, subject: Contractor Support - HLW Negotiated Rulemaking. (21 pages)