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June 2, 2000

**TO ADDRESSEE ONLY**

Mr. Wayne Hodges  
Deputy Director  
Spent Fuel Project Office  
United States Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Subject: Allegation NMSS-2000-A-0013

Reference: NRC Letter, Brach to Davis, May 12,2000, re: Allegation NMSS-2000-A-0013

Dear Mr. Hodges:

In response to the referenced letter, NAC International encloses herewith the responses to the Request for Additional Information. Because much of the requested information deals with trade secret and proprietary testing, methods, considerations, data, and reports concerning a product that others are trying to duplicate, our responses have been submitted as proprietary information in accordance with 10 CFR 2.790 (b).

While much of the enclosed is trade secret and proprietary, we have been very open with our information, and our policy with the Nuclear Regulatory Commission remains one of full disclosure. We are pleased to disclose this information to the NRC to aid in the evaluation and disposition of the subject allegation. Additionally, we are conveying to the NRC that we have a significant safety concern if others, claiming to use our technology, do not have the same materials, equivalent experience, and equally effective standards or practices for quality and safety.

I hope that the enclosed is fully responsive to your request, and I trust that the NRC will find the subject allegation without substance or merit.

Please contact me if you have any questions or require any additional information.

Sincerely,

Edward M. Davis  
President and CEO

Enc.

EMD/dnf

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**AFFIDAVIT  
IN SUPPORT OF PROPRIETARY INFORMATION  
CONTAINED IN RESPONSE TO ALLEGATION NMSS-2000-A-0013**

State of Georgia, County of Gwinnett

Willington J. Lee (Affiant), Vice President and Chief Engineer of NAC International, hereinafter referred to as NAC, at 655 Engineering Drive, Norcross, Georgia 30092, being duly sworn, deposes and says that:

1. Affiant is personally familiar with the trade secrets and privileged information contained in the information being submitted in conjunction with the response to Allegation NMSS-2000-A-0013.

In making this application for withholding of proprietary information, NAC International relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4) and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10 CFR Part 9.17(a)(4), 2.790(a)(4), and 2.790(b)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is all "confidential commercial information," and some portions also qualify under the narrower definition of "trade secret," within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).

2. Some examples of categories of information which fit into the definition of proprietary information are:
  - a) Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by NAC's competitors without license from NAC International constitutes a competitive economic advantage over other companies;
  - b) Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product;

- c) Information which reveals cost or price information, production capacities, budget levels, or commercial strategies of NAC International, its customers, or its suppliers;
- d) Information which reveals aspects of past, present, or future NAC International customer-funded development plans and programs of potential commercial value to NAC International;
- e) Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs 4.a, 4.b, 4.d, and 4.e, above.

- 3. The information sought to be withheld is being submitted to the NRC in confidence. The information (including that compiled from many sources) is of a sort customarily held in confidence by NAC International, and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by NAC International. No public disclosure has been made, and it is not available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (4) and (5) following.
- 4. Initial approval of proprietary treatment of a document is made by the manager of the originating component, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents with NAC International is limited on a "need to know" basis.
- 5. The procedure for approval of external release of such a document typically requires review by the staff manager, project manager, principal scientist or other equivalent authority, by the manager of the cognizant marketing function (or his designee), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside NAC International are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.

6. The information classified as proprietary was developed and compiled by NAC International at a significant cost to NAC International. This information is classified as proprietary because it contains detailed descriptions of analytical approaches, procedures, and methodologies not available elsewhere. This information would provide other parties, including competitors, with information from NAC International's technical database and the results of evaluations performed by NAC International. Release of this information would improve a competitor's position without the competitor having to expend similar resources for the development of the database. A substantial effort has been expended by NAC International to acquire and develop this information.
  
7. Public disclosure of the information sought to be withheld is likely to cause substantial harm to NAC International's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of NAC International's comprehensive neutron shield technology, and knowledge base, and its commercial value extends beyond the original development and acquisition cost. The value of the technology base goes beyond the extensive physical database and analytical methodology, and includes development of the expertise to determine and apply the appropriate evaluation process.

The research, development, engineering, analytical, and testing costs comprise a substantial investment of time and money by NAC International.

The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

NAC International's competitive advantage will be lost if its competitors are able to use the results of the NAC International experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions.

The value of this information to NAC International would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive NAC International of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools and installation procedures.

Executed at Norcross, Georgia, this 2<sup>nd</sup> day of June, 2000.



Willington J. Lee  
Vice President and Chief Engineer  
NAC International Inc.

Subscribed and sworn to before me this 2nd day of June, 2000.



Notary Public in and for the  
County of Forsyth  
State of Georgia

My commission expires the 16<sup>th</sup> day of April, 2003

Notary Public, Forsyth County, Georgia  
My Commission Expires April 18, 2003