

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

2004-0234

5

RESPONSE
TYPE ☐ FINAL ☒ PARTIAL

REQUESTER

Matthew S. Hammel

DATE

SEP 26 2005

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
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
M, N 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
M, N 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 *

\$

- ☐ 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)

The incoming FOIA/PA request is located in ADAMS at ML041314167.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Nichols

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

2004-0234 Resp 5

SEP 26 2005

PART II.A - APPLICABLE EXEMPTIONSAPPENDICES
N, O

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 253b, 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)
Ex. 4: Disclosure will harm and identifiable private or governmental interest.

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
Jack Strosnider	Director, Office of Nuclear Material Safety and Safeguards	Appendix N and O	<input checked="" type="checkbox"/>		

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	04/16/1980	Ltr to Combustion Engineering, Inc, from A. B. Davis-NRC, re: IE Inspection Report No. 70-036/80-01; (7 pages)
2.	07/11-15/80	An Aerial Radiological Survey of Hematite, Missouri and Surrounding Area; (12 pages)
3.	07/30/1980	Ltr to Combustion Engineering, Inc, from A. B. Davis-NRC, re: IE Inspection Report No. 70-036/80-02; (13 pages)
4.	09/04/1980	Ltr to Combustion Engineering, Inc, from A. B. Davis-NRC, re: IE Inspection Report No. 700-036/80-04; (8 pages)
5.	12/08/1980	Ltr to Combustion Engineering, Inc, from James G. Keppler, re: call to inform Mr. Pianki of program for Systematic Appraisal of Lichen Performance and results, IE Inspection Report No 70-36; (7 pages)
6.	03/02/1981	Ltr to Combustion Engineering, Inc, from C. E. Norelius-NRC, re: IE Inspection Report No. 70-036/81-01; (8 pages)
7.	09/08/1982	Ltr to Combustion Engineering, Inc, from J. R. Miller-NRC, re: Inspection Report No. 70-36/82-04(DETP); (8 pages)
8.	04/15/1983	Letter to H. Lichtenberger, CE, from C. J. Paperiello, NMSS, regarding inspection March 15-18, 1983 (9 pages)
9.	07/1983	NUGEG/CR-3387, Radiological Survey of the Combustion Engineering Burial Site Hematite, Missouri (39 pgs)
10.	09/16/1983	Ltr to Combustion Engineering, Inc, from C. J. Paperiello-NRC, re: Inspection Report No. 70-036/83-03(DRMSP); (9 pages)
11.	10/11/1983	Ltr to Combustion Engineering, Inc from C. J. Paperiello, re: Addendum to IE Inspection Report No. 70-036/83-01; (2 pages)
12.	03/27/1984	Ltr to Combustion Engineering, Inc, from C. J. Paperiello-NRC, re: Inspection Report No. 70-036; (10 pages)

APPENDIX M - continued
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
13.	11/19/1986	Ltr to Combustion Engineering, Inc, from Jack A. Hind-NRC, re: Inspection Report No. 70-36/86003(DRS); (13 pages)
14.	12/19/1986	Ltr to Combustion Engineering, Inc, from Jack A. Hind-NRC, re: Inspection Report No. 70-36/86004(DRSS); (26 pages)
15.	05/22/1987	Ltr to Combustion Engineering, Inc from W. D. Shafer-NRC, re: Inspection Report No. 70-36/87001(DRSS); (16 pages)
16.	10/18/1988	Ltr to Bruce Mallett-NMSS from H. E. Eskridge re: Description of core sampling and counting techniques for the new building construction area; (7 page)
17.	10/19/1989	Letter to Combustion Engineering from A. Bert Davis, Regional Administrator, RIII, Subj: August/September 1989 augmented inspection re an August 28, 1989 incident (74 pgs)
18.	12/07/1989	Memorandum from E. M. McKenna, to L. C. Rouse, (NRC), Responds to request to review proposed purchase of C-E by ASEA Brown Boveri (3 pgs)
19.	06/27/1991	Letter from C. J. Haughney, NRC, to J. A. Rode, ABB Combustion Engineering Nuclear Fuel, re submission of clarifying information for 10 CFR 70.25 requirements for decommissioning financial assurance and emergency plans (2 pages)
20.	01/24/1992	Memorandum from G. H. Bidinger, to J. W. Hickey, (NRC), Recommends staff positions on licensing at Hematite & requests staff guidance re: Windsor site before 920130 meeting (7 pgs)

APPENDIX M - continued
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
21.	07/18/1996	Letter from R. C. Pierson, NRC to R. W. Sharkey, ABB Combustion Engineering Nuclear Fuel, forwards Amendment 14 to License SNM-33 & 951204 safeguards evaluation report (2 pgs)
	attach.:	07/18/96 9607240172 Amendment 14 to SNM-33, adding safeguards Condition SG-3.1 for implementation of Transitional Facility Attachment (6 pgs)
	attach.:	07/18/96 Safeguards evaluation report supporting Amendment 14 to License SNM-33 (1 pg)
22.	07/21/03	[ML032100386] Memo from Chris Miller to Marc Dapas (RIII), Subj: Report of Meeting Between NRC and Westinghouse Electric Company (1 page)
23.	12/12/2003	[ML033490354] Letter from C. Miller, RIII, to Mr. Hank Sepp, Westinghouse Electric Co., LLC, Subj: Westinghouse/Hematite - NRC Special Inspection Report No. 070-00036/2003-006(DNMS) (12 pgs)

**APPENDIX N
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	04/27/78	Letter to Mr. L. Rouse from H. Eskridge forwarding C-E Hematite's Emergency Plan (61 pgs) [Ex. 6]
2.	10/03/79	Letter to Robert Stevenson from H. Eskridge concerning safety of the operation of a new waste incinerator in area 240-3 of the Hematite plant. (5 pgs) [Ex. 6]
3.	01/27/82	Letter to R. Page from H. Eskridge with Combustion Eng. Hematite Radiological Contingency Plan (161 pgs) [Ex. 6]
4.	08/16/82	Letter to H.V. Lichtenberger, Combustion Engineering, Subj: Analysis of 70 samples sent to New Brunswick Laboratory (3 pgs) [2 pgs released; 1 pg withheld, Ex. 4]
5.	02/21/83	Letter to W. Crow from H. Eskridge forwarding application for renewal of SNM-33 (97 pgs) [Ex. 6]
6.	01/31/85	Letter to Willard Brown from H. Eskridge enclosing revised pages to the Fundamental Nuclear Material Control Plan (29 pgs) [1 pg released; 29 pgs withheld, Ex. 4]
7.	05/30/85	Letter to Mr. Eskridge from W. Axelson acknowledging receipt of letter (3 pgs) [2 pgs released; 1 pg withheld, Ex. 4]
8.	09/23/85	Letter to W. Brown from H. Eskridge forwarding revised chapter of Fundamental Nuclear Material Control Plan (8 pgs) [1 pg released; 7 pgs withheld, Ex. 4]
9.	03/19/86	Letter to Ray Jackson from H. Eskridge revision to our Fundamental Nuclear Material Control Plan (11 pgs) [1 pg released; 10 pgs withheld, Ex. 4]
10.	09/11/87	Letter to Ray Jackson from H. Eskridge, request for additional information and revisions of 10 CFR 74.31 (43 pgs) [3 pgs released; 40 pgs withheld, Ex. 4]
11.	10/09/87	Letter to G. Gundersen from H. E. Eskridge, Subj: Security Plan (2 pgs) [1 pg released; 1 pg withheld, Ex. 4]

APPENDIX N - continued
RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
12.	11/13/87	Letter to Gordon Gunderson from H. Eskridge, Subj: Measurement Standard Error (4 pgs) [1 pg released; 3 pgs withheld, Ex. 4]
13.	10/27/88	Letter to G. E. Gundersen from James Rode, Subj: Revised Security Plan (1 pg released)
	Attach:	10/1988 Physical Security Plan for Protection of Nuclear Material of Low Strategic Significance, Combustion Engineering, Inc., Hematite, Missouri [19 pgs withheld, Ex. 4]
14.	11/23/88	Letter to C. N. Smith from A. E. Scherer, Subj: Accountability for Transfer of Empty Pellet Tray and Powder Cans [5 pgs released; 2 pgs withheld, Ex. 4]

**APPENDIX O
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	01/01/86	Fundamental Nuclear Material Control Plan (141 pgs) [Ex. 4]
2.	04/93	International Atomic Energy Agency Design information questionnaire Conversion and/or fuel fabrication plants (127 pgs) [Ex 4]