



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

2005-0300

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Eric T. Hysten

DATE

MAR 31 2008

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: **E** 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: **F,G,I,J** 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, 11555 Rockville Pike, Rockville, MD 20852-2738.
- APPENDICES: **F,G,I,J** 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 *

\$ 53.61

* See comments for details

- 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.

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 actual fees for processing the request are as follows:

Search:	\$144.26
Review:	460.05
Duplication	40.20
TOTAL	\$644.51

Since you paid fees in advance in the amount of \$590.90, you will be bill by the NRC in the amount of \$53.61.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Nichols *Russell A. Nichols*

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

2005-0300

MAR 31 2006

PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
G, H, I, J

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 2.390(d)(1).
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(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)

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 Materials Safety and Safeguards	App. G, H/1, H/2	<input checked="" type="checkbox"/>		
Bruce S. Mallett	Regional Administrator, Region IV	Appendix H/5	<input checked="" type="checkbox"/>		
Guy P. Caputo	Director, Office of Investigations	App. I, J, H/3, H/4, H/6			

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 E
RECORD ALREADY AVAILABLE IN THE PDR

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	10/28/96	9610310284	Letter from Ross Scarano, NRC Region IV, to Juan Velasquez, UNC Mining and Milling, transmitting NRC Inspection Report 40-8907/96-01. 11 pages

APPENDIX F
RECORDS BEING RELEASED IN ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DOCUMENT DESCRIPTION/PAGE COUNT</u>
1.	No date	Draft memo from James Lieberman to E. Merschoff, D. Cool, and J. Goldberg, subject: OI Rpt. 4-97-046 - United Nuclear corp. Falsification of Windblown Tailings surveys and Discrimination. 2 pages
2.	No date	Draft Memorandum of Understanding between EPA and USNRC. 10 pages
3.	08/11/86	Letter from Chris Shuey to Dale Smith regarding Radioactive Materials License for UNC Mining and Milling Div., Church Rock New Mexico. 8 pages
4.	07/29/86	Letter from R. N. Mason to Peter Garcia re UNC groundwater discharge permit DP-146. 1 page
5.	04/21/876	Fax from Harry Pettengill to Larry Wright transmitting draft Memo of Understanding between USEPA and USNRC. 8 pages
6.	05/22/87	Letter from Raphael Martin to Harry Pettengill regarding UNC. 2 pages
7.	03/29/89	Memo from Joel Grimm to Ray Gonzales, subject: Review of UNC Reclamation Plan, Church Rock, New Mexico. 4 pages
8.	10/16/90	Memo from R. Bernero to R. E. Cunningham, subject: Allegations of Improper or Illegal Waste Disposal, with attached memo from B. Hayes, Office of Investigations. 2 pages
9.	11/06/90	Allegation Management System. 1 page
10.	04/25/96	Allegation Review Board Summary. 1 page
11.	04/26/96	Memo from Robert O'Connell to Russ Wise, subject: Allegation- United Nuclear Corporation, Church Rock 1 page

APPENDIX F
RECORDS BEING RELEASED IN ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DOCUMENT DESCRIPTION/PAGE COUNT</u>
12.	11/25/96	Memo from E. L. Williamson to L. J. Callan, subject: United Nuclear Corp.: Deliberate Violation of Procedures and Falsification of Employee Records (Case No. 4-96-022). 1 page
13.	12/04/96	Memo from James Lieberman to L. Callan, D. Cool and J. Goldberg, subject: OI Report 4-96-022: United Nuclear Corporation. 1 page
14.	07/31/97	Memo from r. O'Connell to R. Wise, subject: Allegation - NMSS-97-A-0025 - UNC (Churchrock Site). 1 page
15.	07/31/97	Letter from Robert O'Connell to Levon Benally regarding Allegation - NMSS-97-A-0025. 1 page
16.	08/19/97	Note of Telephone Conversation from Bob O'Connell, subject: United Nuclear Corporation, Church Rock - NMSS-97-A-0025. 1 page
17.	08/19/97	Letter from Robert O'Connell to Levon Benally re NMSS-97-A-0025. 1 page
18.	10/22/97	E-mail from C. Cain re RIV-97-A-0193. 1 page
19.	12/02/97	E-mail from E. Williamson re UNC (RIV-97-A-0193) 1 page
20.	02/05/98	Memo from E. L. Williamson to E. W. Merschoff, subject: UNC: Falsification of Windblown Tailing Surveys and Discrimination for Identifying Safety Concerns (Case No. 4-97-046) 1 page
21.	02/19/98	E-mail from John Lusher re UNC OI Rpt. 4-97-046. 1 page
22.	02/19/98	Memo from James Lieberman to E. Merschoff, D. Cool, and J. Goldberg re OI Report 4-97-046. 1 page
23.	11/01/82	Memo from Bruce S. Garber to Russell Rhoades, State of New Mexico, regarding UNC enforcement. 6 pages

**APPENDIX G
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	04/16/96	E-mail from Kenneth Hooks re allegation about church rock uranium mill and tailings site. 1 page EX. 7C
2.	04/22/96	Handwritten note from Ken Hooks to B. O'Connell regarding UNC Church Rock site. 1 page EX. 7C
3.	07/24/97	Allegation Review Board Summary. 1 page EX. 7C
4.	07/31/97	Letter from Robert O'Connell to individual regarding Allegation - NMSS-97-A-0025. 2 pages EX. 7C
5.	04/16/96	Allegation Receipt Report. 1 page EX. 7C
6.	04/26/96	Letter from Robert O'Connell to individual re allegation NMSS-96-A-0012. 2 pages EX. 7C
7.	No date	Allegation Receipt Report. 1 page EX. 7C

**APPENDIX H
RECORDS BEING WITHHELD IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	03/18/88	Memo from Stuart A. Treby to Hugh L. Thompson, subject: Memorandum of Understanding Between NRC Region IV and EPA Region VI. 2 pages EX 5 Attorney-Client privilege
2.	08/26/96	Exhibit 3 to Office of Investigations Case No. 4-96-022: Report of Interview with individual. 2 pages EX. 7C
3.	09/30/97	Exhibit 3 to OI Case No. 4-97-046L Statement from individual. 3 pages EX. 7C
4.	02/??/?	Memo from William Brown to Harry Pettengil regarding MOU Between EPA and NRC. 3 pages EX. 5 Attorney-Client privilege
5.	09/29/97	Exhibit 2 to Case No. 4-97-046: Transcript of Interview with individual. 102 pages EX. 7C

**APPENDIX I
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	11/25/96	Office of Investigations (OI) Case No. 4-96-022: Deliberate Violation of Procedures and Falsification of Employee Records. 15 pages EX. 7C
2.	No date	Exhibit 1 to OI Case 4-96-022: Investigation Status Record. 1 page EX. 7C
3.	04/26/96	Exhibit 2 to OI Case 4-96-022: Letter from Robert O'Connell to individual regarding Allegation NMSS-96-A-0012. 2 pages EX. 7C
4.	No date	Exhibit 4 to OI Case No. 4-96-022: Employee Training. 2 pages EX. 7C
5.	08/27/96	Exhibit 6 to Case No. 4-96-022: Report of Interview with individual. 1 page EX. 7C
6.	10/08/96	Exhibit 7 to Case No. 4-96-022: Report of Interview with individual. 1 page EX. 7C
7.	10/08/96	Exhibit 8 to Case No. 4-96-022: Report of Interview with Individual. 1 page EX. 7C
8.	10/08/96	Exhibit 9 to Case No. 4-96-022: Report of Interview with individual. 2 pages Ex. 7C
9.	No date	Exhibit 10 to Case 4-96-022: handwritten notes. 1 page EX. 7C

**APPENDIX J
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	02/05/98	Office of Investigations Case 4-97-046: United Nuclear corporation - Falsification of Windblown Tailing Surveys and Discrimination for Identifying Safety Concerns. 13 pages EX. 5 Attorney-Client privilege, and Ex. 7C
2.	No date	Exhibit 1 to Case No. 4-97-046: Investigation Status record. 1 page Ex. 7C
3.	10/08/97	Memo from V. Van Cleave to W. Brown regarding Case No. 4-97-046. 1page EX. 7C
4.	01/09/97	Exhibit 4 to Case No. 4-97-046: Letter from E. L. Williamson to Steve Nelson, Crown Point Police regarding police report. 8 pages total, 1 page released Ex. 7C