



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

2007-0310

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RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Charles J. Fitzpatrick

DATE

OCT 22 2007

#### 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 **A & B** 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 **B** 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)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Russell A. Nichols *Russell A. Nichols*

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**PART II.A -- APPLICABLE EXEMPTIONS**

APPENDICES  
**B**

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
Michael F. Weber	Director, NMSS	Appendix B	✓		

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 A  
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	07/28/2006	Email from Timothy McCartin to Charlotte Abrams and Frank Cardile (all Office of Nuclear Material Safety and Safeguards (NMSS) re: request from the Office of the Secretary (SECY) for date for Work Issue Tracking System (WITS) Item 200500313, "Final Rulemaking to Amend 10 CFR Part 63, 'Implementation of a Dose Standard After 10,000 Years.'" (1 page)
2.	10/12/06	Status of EPA Standard Handout from Technical Assistants Briefing. 1 pg
3.	04/02/2007	Email from Timothy McCartin (NMSS) to Frank Cardile (FSME) Re: date request for Work Issue Tracking System (WITS) Item 200500313 (1 page).
4.	04/03/2007	Email from F. Cardile (FSME) to T. McCartin (NMSS) proposing a response to the request for a date for the WITS 200500313 action item and issuance of a final amendment to 10 CFR Part 63, the pending action which produced the WITS number. (1 page)
5.	04/03/2007	Email from F. Cardile to James Luehman and Kevin Hsueh (all FSME), stating the email sent to T. McCartin (NMSS), would be the reply to Barbara Fleming (FSME). Also includes B. Fleming's email on 4/2 to J. Luehman as to why a ticket has not been assigned. (1 page)
6.	05/09/07	Calendar entry for EPA briefing (1 page)
7.	5/17/07	Status of Standard - handout from Technical Assistants Briefing (1 page)
8.	06/7/2007	Email from T. McCartin (NMSS), to Patrice Bubar, F. Cardile, Charles Miller, Dennis Rathbun (all FSME), Lawrence Kokajko, Eric Leeds, Mike Weber and Aby Mohseni (all NMSS) and Joseph Gray, (OGC), regarding EPA standards being sent to OMB. (1 page)
9.	06/11/2007	Email from Mark Delligatti to F. Cardile (both FSME), regarding need for talking points on the Part 63 final rule. (1 page)
10.	06/13/2007	Email from T. McCartin (NMSS) to F. Cardile and M. Delligatti (both FSME), regarding WITS 200500313 and submitting a package to EDO based on the OMB information that is currently available. Also includes emails from M. Delligatti and F. Cardile on the same matter. (1 page)
11.	06/13/2007	Email from M. Delligatti to Andy Imboden, K. Hsueh, P. Bubar and B.

Fleming (all FSME), regarding WITS 200500313 and submitting a date at the end of June. Also includes email from B. Fleming stating that SECY is requesting a date now if possible instead of June. (1 page)

12. 7/03/07 E-mail from M. Weber (NMSS/NRC) to C. Carpenter and Virgilio (NRC): FYI -Call with EPA on Status of Yucca Mountain Standard (1 page)
13. 08/14/2007 Email from T. McCartin (NMSS) to F. Cardile (FSME) informing of status on Part 63. Also includes email from F. Cardile requesting update on Part 63. (1 page)
14. 08/14/2007 Email from F. Cardile to D. Rathbun, K. Hsueh, and P. Bubar (all FSME), attaching email (#10 above) from T. McCartin (NMSS) informing status of Part 63

**APPENDIX B  
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	5/16/07	E-MAIL from T. McCartin to N. Jensen (OGC/NRC) regarding revision. 2 pages <b>EX. 5</b>
2.	6/12/07	E-MAIL from T. McCartin to N. Jensen (OGC/NRC) RE: Strikeout version of a paragraph. (2 pages) <b>EX. 5</b>
3.	6/12/07	E-MAIL from T. McCartin to N. Jensen (OGC/NRC) RE: Strikeout version of a paragraph in the preamble to EPA Standard) [ Second version] (2 pages) <b>EX. 5</b>
4.	6/12/07	E-MAIL from T. McCartin (NRC) to D. Schultheisz (EPA) on potential revision to preamble of Standard - page 34 (2 pages) <b>EX. 5</b>
5.	6/19/07	E-MAIL from T. McCartin (NRC) to R. Johanhsson (OMB) RE: NRC Comments on Revised Yucca Mountain package (4 pages) <b>EX. 5</b>
6.	7/23/07	E-MAIL from M. Weber, (NMSS/NRC) to T. McCartin (NRC) RE: Information on EPA Response to Comments on Proposed YM Standards. (1 page) <b>EX. 5</b>
7.	8/9/07	E-MAIL from L. Kokajko (NMSS/HLWRS) to A. Persinko and M. Weber (NRC) RE: EPA contact and call (1 page) <b>EX. 5</b>
8.	2006/2007	DEDMRS Monthly Briefings on High-Level Waste Repository Safety (4 pages) <b>EX. 5</b>
9.	07/26/2007	Email from F. Cardile (FSME) to T. McCartin (NMSS) regarding status of Part 63. (1 page)