

From: James Miller [Jmiller@sabiainc.com]
Sent: Thursday, December 18, 2008 4:45 PM
To: Janine Katanic
Subject: Re: SABIA post-conference submittals

Dear Dr. Katanic,

Following telephone discussions with you and with Mr. Jack Whitten, I have revised my opinion on precisely what information needs to be withheld as security-related information. Therefore, please disregard my statement to withhold from public disclosure under the provisions of 10CFR2.390.

In addition, under the normal course of company documents, all SABIA company documents are marked as SABIA proprietary. This marking is done to identify material which may be used to reproduce or circumvent the design of products, or of company technical information, or to allow "reverse-engineering" of a company proprietary design.

For all licensing and regulatory use, SABIA allows free use of this information by the NRC.

For any information that is considered by your department as security-related information, please feel free to prevent disclosure.

Sincerely,

James F. Miller
R.S.O.
SABIA, Inc.

At 02:04 PM 12/11/2008, you wrote:

Mr. Miller,

As discussed with you on the phone, NRC has been reviewing the corrective actions that you submitted following the conference. Also as discussed, there are some questions about how SABIA marked the documents and the basis for SABIA's request that they be withheld. NRC strives to maintain openness and provide the public with access to information about the facilities and materials it regulates. As a result, we need to carefully consider licensee's requests that information be withheld from the public. The letter that SABIA submitted is not marked as security or proprietary information. However, the supplemental letters that SABIA submitted that reference SABIA's revised procedures/forms were marked "security related information, withhold from public disclosure under 10 CFR 2.390." Furthermore, the "forms" have no markings and the "procedures" are not marked as "security related" but instead are marked as "SABIA Proprietary." So the letter does not agree with what is on the individual documents, causing us to question the intent of SABIA's withholding request.

You should review what you submitted to NRC and make a clear determination as to whether it

actually contains "security related information", "proprietary information", both, none, or something different. For guidance, you may wish to review NRC Regulatory Issue Summary (RIS) 2005-31, "Control of Security-Related Sensitive Unclassified Non-Safeguards Information handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear material." You can find RIS 2005-31 at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/2005/ri200531.pdf>

You should also take a look at the requirements in 10 CFR 2.390 at: <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0390.html> The summary I am presenting herein does not substitute for the regulatory requirement - it is just a summary for informational purposes only. For the full text, refer to the actual requirement. In part, anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information shall:

- request withholding at the time the document is submitted
- comply with the document marking and affidavit requirements set forth in the requirement
- ensure that the document containing information sought to be withheld is properly marked per the requirement (e.g. language similar to "proprietary information - withhold from public disclosure under 10 CFR 2.390"
- each document or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (*i.e.*, trade secret, proprietary, etc.)
- if the request is to withhold for things such as proprietary information, the request must be accompanied by an affidavit that: identifies the document or part of the document sought to be withheld; identifies the official position of the person making the affidavit; declares the basis for proposing the information be withheld, encompassing considerations set forth in the regulation; includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and indicates the location(s) in the document of all information sought to be withheld.

If you fail to submit the appropriate information etc to justify withholding the information, NRC will release the information to the public. So please let me know your intentions ASAP in this regard so that we can process the documents as appropriate.

Also as previously discussed, as a reminder, if SABIA alters/revises/creates procedures that impact licensed activities (such as those for source removal, ALARA, leak test, etc.), those need to be submitted to NRC as an amendment request for NRC review and approval so that they can be tied to the license as SABIA's commitments to NRC. If you wish to discuss this particular matter further, I suggest you contact Mr. Whitten directly. Amendment requests would also need to be marked and submitted in accordance with 10 CFR 2.390, so please keep that in mind.

Janine

Janine F. Katanic, PhD, CHP
Health Physicist
US Nuclear Regulatory Commission

office: 817-860-8151
fax: 817-860-8188
email: Janine.Katanic@nrc.gov

E-mail Properties

Mail Envelope Properties (1ad93063-c2e0-484e-b170-072f566a4540)

Subject: Re: SABIA post-conference submittals
Sent Date: 12/18/2008 4:45:04 PM
Received Date: 12/18/2008 4:45:04 PM
From: James Miller

Created By: Jmiller@sabiainc.com

Recipients:
Janine.Katanic@nrc.gov (Janine Katanic)
Tracking Status: None

Post Office:
TWMS01.nrc.gov

Files	Size	Date & Time
MESSAGE	12453	12/18/2008

Options
Expiration Date:
Priority: oImportanceNormal
ReplyRequested: False
Return Notification: False

Sensitivity: oNormal
Recipients received: