



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

2008-0314

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Elizabeth Marvin

DATE

JAN 30 2009

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 **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 **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 *

\$ 555.63

* 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 fees for processing the request are as follows: \$369.90 for 12 hours search; \$4862.87 for 95 hours review; \$373.60 for duplication (1868 pages). Since you provided fees in advance in the amount of \$6162.00, you will receive a refund from the NRC in the amount of \$555.63.

Some records subject to the request were originated by or are of interest to the Department of Energy and the Environmental Protection Agency. The records have been referred to those agencies for review and direct response to you.

The incoming request is in ADAMS at accession number ML082460452.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna Sealing
Donna Sealing

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES

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.
 - Low 2 Internal matters of a relatively trivial nature.
 - High 2 Disclosure would risk circumvention of a legal requirement.
- 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).
 - Disclosure will harm an identifiable private or governmental interest.
- 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
Samuel J. Collins	Regional Administrator, Region 1	Appendix J	<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 I
RECORDS BEING RELEASED**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	No date	License amendment SNM-185. 1 page
2.	No date	Items Pertaining to a Determination of Wastewater Flows & Quantities – Engelhard – Plainville Plant. 1 page
3.	02/06/57	Contract Phase: Heal Physics, Submitted to D. E. Makepeace Company, subject: Liquid Waste Disposal System. 8 pages
4.	08/19/57	Letter from W. F. Mittendorf, D. E. Makepeace Co. to Commonwealth of Massachusetts Department of Sanitation re water disposal system. 3 pages
5.	08/20/57	Letter from Clarence Sterling, Commonwealth of Massachusetts to D. E. Makepeace Company regarding disposal of radioactive liquid wastes. 3 pages
6.	10/20/59	Letter from J. C. Delaney to John Durant re SNM-185. 1 page
7.	09/29/60	Purchase Requisition. 1 page
8.	10/14/59	Telegram. 1 page
9.	12/15/59	Letter from J. H. Durant to Lyall Johnson regarding License SNM-185. 4 pages
10.	01/04/60	Memo from William Brobst to Charles McCallum re D. E. Makepeace Company Request for Amendment to License. 2 pages
11.	01/14/60	Letter from Norton Weiss to Commonwealth of Massachusetts enclosing drawings of leaching pit. 7 pages
12.	01/22/60	Letter from John Durant to Charles McCallum regarding SNM-185 Amendment to Incinerate Organic Waste. 2 pages
13.	02/04/60	Letter from Worthen Taylor to Norton Weiss regarding enlargement of the radioactive waste disposal system. 1 page
14.	02/12/60	Memo from Clifford Beck to Lyall Johnson regarding Engelhard Industries, inc. 2 pages
15.	02/15/60	Memo from Lester Rogers to Lyall Johnson re D. E. Makepeace Division. 2 pages

16. 02/17/60 Letter from Roy Wilson to Norton Weiss regarding Plainville Enlargement of Waste Disposal System. 1 page
17. 02/25/60 Letter from Charles McCallum to John Durant regarding application. 1 page
18. 03/08/60 Letter from John Durant to J. C. Delaney regarding Permit to Incinerate Combustible Waste. 1 page
19. 03/17/60 Memo to Files from J. J. Lane regarding Engelhard Industries, Inc. requests for amendment to license SNM-185. 1 page
20. 05/17/60 SNM-185 as amended. 1 page
21. 08/22/61 Letter from Raymond Ware to Instruments, Inc., regarding procurement of water alarm. 1 page
22. 08/18/61 Memo from N. M. Weiss regarding visit to Massachusetts Department of Public Health. 1 page
23. 08/14/61 Memo regarding disposal system. 2 page
24. 08/09/61 Letter from Worthen Taylor to D. E. Makepeace Division regarding Plainville Radioactive Liquid Waste Disposal System. 1 page
25. 08/02/61 Memo from Norton Weiss to R. Ware regarding inspection of waste disposal facilities. 1 page
26. 11/30/60 Letter from C. E. Canham to J. C. Delaney regarding in plant and environmental air survey programs. 2 pages
27. 09/21/60 Memo from Norton Weiss to Mr. Ware regarding recirculating the cooling water. 1 page

**APPENDIX J
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	04/20/1960	Handwritten notes - Engelhard Industries, Background Information Section 5 (4 pages) / Exemption 6
2.	03/14/1960	Engelhard Industries, Inc. Incoming Telegram dtd 03/14/1960 & documents from 1959, 1960 & 1961 (128 pages) / Exemption 4 and 6
3.	04/20/1960	Handwritten notes - Engelhard Industries, Inc. Background Information, Organization & Admin., Section 3 (1 page) / Exemption 6
4.	01/09/1960	Handwritten -Engelhard Industries, Inc. Background Information, Section 1 dtd 01/09/1960 (53 pages) / Exemption 6
5.	04/20/1960	Handwritten -Engelhard Industries, Inc. Background Information Section 2 (2 pages total, 1 page released) / Exemption 4
6.	08/04/1961	Engelhard Industries, Inc. Cover Letter dtd 08/04/1961 for Inspection on 12/12 & 13/1960 (2 page) / Exemption 6
7.	11/19/1959	Engelhard Industries, Inc. Cover Letter dtd 11/19/1959 w. Amended License, Feasibility Report DEM-8, and Report of Apparent Radiation Overexposure During the Period from 6/13-25/1960 (18 pages total, 14 pgs released) / Exemption 4
8.	11/12/1959	Engelhard Industries, Inc. Feasibility Report DEM-9, dtd 11/13/1959 (14 pages) / Exemption 4
9.	05/17/1960	Engelhard Industries, Inc. Letter and Attachment dtd 05/17/1960, re: License Amendment (15 pages) / Exemption 4
10.	12/22/1960	Engelhard Industries, Inc. Letter dtd 12/22/1960 w/Attached Investigation Report on Overexposure (3 pages) / Exemption 6
11.	12/28/1959	Engelhard Industries, Inc. Letter dtd 12/28/1959, re: Feasibility Report DEM-5 and Revision A (2 pages) / Exemption 4
12.	09/27/1963	Engelhard Industries, Inc. Letters & Memos dtd 09/27/63, 08/19/58, 08/13/63, 12/28/62, 12/21/61, 10/17/62, 9/10/62,

- 5/28/62, 5/11/62, 4/25/62, 5/7/62, 8/30/61, 8/4/61, 5/10/62, 5/4/61, 4/24/61, 4/18/61, 4/6/61, 2/21/61 (67 pages) / Exemption 6
13. 08/30/1961 Engelhard Industries, Inc. Letter dtd 08/30/1961 on Source Material & Special Nuclear Material Licenses (2 pages) / Exemption 6
 14. 11/06/1959 Engelhard Industries, Inc. Letter dtd 11/06/1959, re: DEM-5 Revision A (3 pages) / Exemption 4
 15. 04/20/1960 Engelhard Industries, Inc. Review of Criticality Policies and Procedures/Summary of Manufacturing Operations (10 pages) / Exemption 4
 16. 01/18/1960 Engelhard Industries, Inc. Transmittal Cover Memo dtd 01/18/1960 w/Compliance Inspection Report (30 pages) / Exemption 6
 17. 02/21/1961 Engelhard Industries, Inc. Transmittal Inspection Report Cover Memo dtd 02/21/1961 w/ compliance Inspection Report for SNM-185 (30 pages) / Exemption 6