

July 29, 2009

Mr. Jeffrey R. Williams, Manager
Licensing Support
US Department of Energy
Office of Civilian Radioactive
Waste Management, RW-6
1000 Independence Avenue, SW
Washington, DC 20585

SUBJECT: YUCCA MOUNTAIN – REQUEST FOR WITHHOLDING FROM PUBLIC
DISCLOSURE – RE: U.S. DEPARTMENT OF ENERGY RESPONSE TO
REQUEST FOR ADDITIONAL INFORMATION (RAI) REGARDING VOLUME 3,
CHAPTER 2.2.1.2.1, SCENARIO ANALYSIS AND EVENT PROBABILITY, 4TH
SET, RAI #24

Dear Mr. Williams:

By letter dated June 19, 2009, the U.S. Department of Energy (DOE) submitted an affidavit (Enclosure 1 to that letter), executed by Gilles Clement, President, Recycling Technologies, AREVA NC INC, on behalf of AREVA NC SA, requesting that the High Burn-Up Actinide Criticality Program Experimental Data as presented in four reports (“Reports”) and associated electronic data files (“Data”) be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390. The corresponding report description in the affidavit is indicated in parentheses:

1. Fernex, F. 2006. “Programme HTC Phase 1: Réseaux de crayons dans l’eau pure (Water moderated and reflected simple arrays) Réévaluation des expériences.” Note DSU/SEC/T/2005-33/D.R., IRSN, June 2006 (affidavit description a)
2. Fernex, F. 2006. “Programme HTC Phase 2: Réseaux simples en eauempoisonnée (bore et gadolinium) (Reflected simple arrays moderated by poisoned water with gadolinium or boron) Réévaluation des expériences.” Note DSU/SEC/T/2005-38/D.R., IRSN, June 2006 (affidavit description b)
3. Fernex, F. 2006. “Programme HTC Phase 3: Configurations “stackage en piscine (pool storage) Réévaluation des expériences.” Note DSU/SEC/T/2005-37/D.R., IRSN, June 2006 (affidavit description c)
4. Fernex, F. 2006. “Programme HTC Phase 4: Configurations “Châteaux de transport” (Shipping cask) Réévaluation des expériences.” Note DSU/SEC/T/2005-36/D.R., IRSN, June 2006 (affidavit description d)

By letter dated July 1, 2009, DOE also provided a DVD containing the Data that accompany the four reports.

The affidavit stated that the Data and Reports should be considered exempt from mandatory public disclosure pursuant to 10 CFR 2.309(b)(4). The affiant asserts that:

1. The [Data and] Reports have and presently are maintained in confidence by AREVA NC SA and IRSN [Institut de Radioprotection et de Sureté Nucléaire];
2. The [Data and] Reports, and similar information of this type, are customarily held in confidence by AREVA NC SA and IRSN. When the NRC requests this type of information (i.e. proprietary/business sensitive), AREVA NC SA and IRSN routinely request that it be withheld from public disclosure.
3. We have been assured by the DOE Yucca Mountain Project Office that it will transmit the Reports to NRC in confidence.
4. The Reports are not available in public sources.
5. Public disclosure of the Reports is likely to cause substantial harm to AREVA NC SA and IRSN position:
 - a. Development of the Reports required expenditure of considerable resources. To the best of AREVA NC SA's knowledge and belief, a competitor would have to undergo similar expense in generating equivalent information;
 - b. In order to develop such reports, a competitor would also require considerable time and inconvenience related to the development of a design and analysis of a dry spent fuel transportation system and the generation of criticality data;
 - c. If the information is made available without charge, AREVA NC SA would lose the opportunity to gain significant economic consideration from the sale thereof. In addition, it would deprive AREVA NC SA of the right to exercise their discretion as to whom to license or sell the information; and
 - d. If the Reports were available to competitors, it would enable them to modify their products and be in a strong competitive position, without having incurred the time and expenses for the Reports.

The NRC staff has reviewed your application and the material in accordance with the requirements of 10 CFR 2.390 and, on the basis of the statements in the affidavit, have determined that the submitted information sought to be withheld contains proprietary commercial information and Sensitive Unclassified Non-Safeguards Information (SUNSI) that should be withheld from public disclosure.

Therefore, we have determined that the Data and Reports described above will be withheld from public disclosure pursuant to 10 CFR 2.390.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the document. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

If you have any questions regarding this matter, I may be reached at (301) 492-3180.

Sincerely,

/RA/

John H. (Jack) Sulima Project Manager
Project Management Branch Section B
Division of High-Level Waste
Repository Safety
Office of Nuclear Material Safety
and Safeguards

Docket No. 63-001

cc: See enclosed list

Letter to J. Williams
cc:

From J. Sulima

Dated: July 29, 2009

C. Berkey, Alexander, Berkey, Williams & Weathers LLP
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J. Summerson, DOE/OCWRM
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Letter to J. Williams
cc: (Continued)

From J. Sulima

Dated July 29, 2009

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T. Story, Rep. Berkley's office
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K. Pace, Rep. Heller's office
G. Facchiano, Rep. Heller's office
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J. Duran, Rosette & Associates, PC
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A. Shaw, Sen. Ensign's office
S. Joya, Sen. Ensign's office
J. Min, Sen. Ensign's office
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A. McDonough, Sen. Reid's office
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B. Durham, Timbisha Shoshone Tribe
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B.J. Garrick, NWTRB
S. Devlin, Private Citizen
G. Hudlow, Private Citizen
K. Skipper, USGS

J. Williams

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If you have any questions regarding this matter, I may be reached at (301) 492-3180.

Sincerely,

/RA/

John H. (Jack) Sulima Project Manager
Project Management Branch Section B
Division of High-Level Waste
Repository Safety
Office of Nuclear Material Safety
and Safeguards

Docket No. 63-001

cc: See enclosed list

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