



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
612 EAST LAMAR BLVD, SUITE 400  
ARLINGTON, TEXAS 76011-4125

July 13, 2009

Tracerco  
ATTN: Norman Lanier  
Corp. Radiation Safety Officer  
4106 New West Dr.  
Pasadena, TX 77507

SUBJECT: Confidential Information Request

Dear Mr. Lanier,

On NRC Form 241s that have been submitted to our office, you have requested that your customer information be treated as Confidential Information and to withhold the information from an "Open Records Request." However, the U.S. Nuclear Regulatory Commission (NRC) can only review formal requests made in accordance with 10 CFR 2.390. Please follow the procedures and document marking criteria as outlined in 10 CFR 2.390(b), enclosed, to properly request withholding from public disclosure and to properly mark the document as required.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

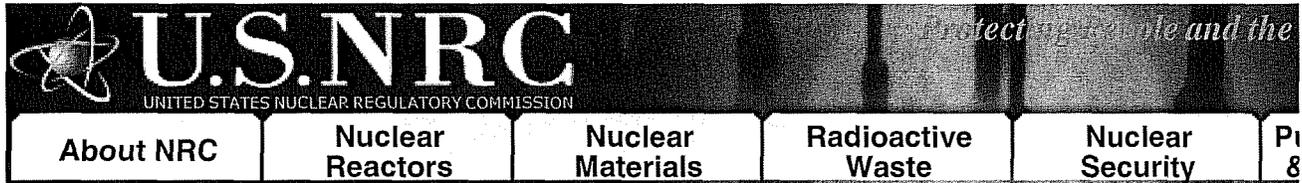
If there are any questions regarding this letter or enclosure, please contact me at 817-276-6552.

Sincerely,

A handwritten signature in cursive script that reads "Rachel S. Browder".

Rachel S. Browder, Health Physicist  
Nuclear Materials Safety Branch B

Enclosure: As stated



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## § 2.390 Public inspections, exemptions, requests for withhold

(a) Subject to the provisions of paragraphs (b), (d), (e), and (f) of this section, final NRC records and documents but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, modification, suspension, revocation, or violation of a license, permit, order, or standard design approval, or rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling need for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site <http://www.nrc.gov>, and/or at the NRC Public Document Room, except for matters that are:

- (1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and
- (ii) Are in fact properly classified under that Executive order;
- (2) Related solely to the internal personnel rules and practices of the Commission;
- (3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), but only if that statute expressly requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes criteria for withholding or refers to particular types of matters to be withheld.
- (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;
- (6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such records or information:
  - (i) Could reasonably be expected to interfere with enforcement proceedings;
  - (ii) Would deprive a person of a right to a fair trial or an impartial adjudication;
  - (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
  - (iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or Federal law enforcement authority, or any private institution which furnished information on a confidential basis, and, in the case of a confidential source, information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal law enforcement authority in the course of conducting a lawful national security intelligence investigation, information furnished by a confidential source;
  - (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to result in the circumvention of the law; or
  - (vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seek document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or commercial or financial information.

(1) The submitter shall request withholding at the time the document is submitted and shall comply with the marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review documents marked to determine whether they contain information eligible for withholding under paragraph (a) of this section; documents not so marked may be made available to the public at the NRC Web site, <http://www.nrc.gov> or Public Document Room.

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked with language substantially similar to: "confidential information submitted under 10 CFR 2.390"; "withhold from public disclosure under 10 CFR 2.390"; or "proprietary" to indicate it contains information the submitter seeks to have withheld from public disclosure.

(B) 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, privacy, *etc.*) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

(ii) The Commission may waive the affidavit requirements on request, or on its own initiative, in circumstances where the Commission, in its discretion, deems appropriate. Otherwise, except for personal privacy information, which is exempt from the affidavit requirement, the request for withholding must be accompanied by an affidavit that--

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in paragraph (b)(4) of this section;

(D) Includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must include a full statement of the reason for claiming the information should be withheld from public disclosure. This statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, where possible, into a separate document. The affiant must designate with appropriate markings information submitted with the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to public disclosure only in accordance with the provisions of § 9.19 of this chapter.

(2) A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for the protection of competitive positions and the right of the public to be fully apprised as to the basis for and effect of rulemaking actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

(3) The Commission shall determine whether information sought to be withheld from public disclosure under paragraph (a) of this section:

(i) Is a trade secret or confidential or privileged commercial or financial information; and (ii) If so, should be public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider

(i) Whether the information has been held in confidence by its owner;

(ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntary information, whether there is a rational basis therefor;

(iii) Whether the information was transmitted to and received by the Commission in confidence;

(iv) Whether the information is available in public sources;

(v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to position of the owner of the information, taking into account the value of the information to the owner; the cost or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(5) If the Commission determines, under paragraph (b)(4) of this section, that the record or document contains secrets or privileged or confidential commercial or financial information, the Commission will then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the concern for protection of a competitive position, and whether the information should be withheld from public disclosure under this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it will be returned to the applicant.

(6) Withholding from public inspection does not affect the right, if any, of persons properly and directly to inspect the document. Either before a decision of the Commission on the matter of whether the information is to be publicly available or after a decision has been made that the information should be withheld from public disclosure, the Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection under a protective agreement by contractor personnel or government employees, by NRC officials, by the presiding officer in a proceeding, and under protective order by the parties to a proceeding. In camera sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such in camera session will be made publicly available.

(c) The Commission either may grant or deny a request for withholding under this section.

(1) If the request is granted, the Commission will notify the submitter of its determination to withhold the information from public disclosure.

(2) If the Commission denies a request for withholding under this section, it will provide the submitter with reasons for that determination. This decision will specify the date, which will be a reasonable time thereafter, when the document will be available at the NRC Web site, <http://www.nrc.gov>. The document will not be returned to the submitter.

(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request that the document be returned, and the document will be returned unless the information--

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding; or

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR part 9, section 9.10; or

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

(d) The following information is considered commercial or financial information within the meaning of § 9.10 of this chapter and is subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensor's physical protection, classified matter protection, or material control and accounting program for material not otherwise designated as Safeguards Information or classified as National Security Information Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities deemed to constitute authority for the NRC to reproduce and distribute sufficient copies to carry out the Commission's official responsibilities.

(f) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents pursuant to this section, issue orders consistent with the provisions of this section and § 2.705(c).

[72 FR 49477, Aug. 28, 2007; 72 FR 49152, Aug. 28, 2007]

<sup>1</sup> Such records and documents do not include handwritten notes and drafts.

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Thursday, July 09, 2009