

September 3, 2009

Mr. Ernest Davis

IN RESPONSE REFER TO  
TO FOIA/PA-2009-0020A  
(FOIA/PA-2009-0173)

Dear Mr. Davis:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated June 19, 2009, to the Freedom of Information Act/Privacy Act Officer, in which you appealed the agency's June 4, 2009 decision regarding your May 21, 2009 Freedom of Information Act (FOIA) request [FOIA/PA-2009-0091], for certain documents relating to Radioactive Sealed Source and Device Registry Number NR-1298-D-101-S for Qynergy Corporation. Specifically, you are appealing the decision to withhold portions of record B/1.

Acting on your appeal, I have reviewed the record in this case and have determined that some information will be made available to you. Therefore, I have partially granted and partially denied your appeal. The released portions of record B/1 are enclosed.

The agency will continue to withhold portions of this record from public disclosure pursuant to Exemption 4 (5 U.S.C § 552(b)(4) and 10 CFR 9.17(a)(4) of the Commission's regulations. Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential, which if disclosed could cause competitive harm to the submitter.

The NRC recognizes that the originator of the record withdrew its initial request to consider the record proprietary. But the originator later withdrew that statement and again requested that the NRC withhold portions of its record as proprietary information. The NRC then asked for and received adequate evidence from the originator to substantiate its proprietary claim under the standards set forth in 10 CFR § 2.390(b)(4).

This is the NRC's final decision. As set forth in the FOIA (5 U.S.C. § 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business. Judicial review can also be had in the district in which the agency's records are situated or in the District of Columbia.

Sincerely,

**/RA/**

Darren B. Ash  
Deputy Executive Director for Corporate  
Management and Chief Freedom of Information  
Act Officer  
Office of the Executive Director for Operations

Enclosure: As stated

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