

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF

NUCLEAR METALS, INC.

CONCORD, MASSACHUSETTS

License Nos: SMB-179
SUB-1452

Docket Nos: 040-00672
040-08866

**SUPPLEMENTAL APPLICATION TO WITHHOLD FROM PUBLIC
DISCLOSURE MATERIAL IN RESPONSE TO DEMAND FOR
INFORMATION RELATING TO DECOMMISSIONING FUNDING PLAN**

Pursuant to 10 C.F.R. § 2.790(b), Nuclear Metals, Inc. ("NMI") hereby supplements its application to keep confidential its July 1, 1994 Response to demand for Information ("Response") regarding NMI's Decommissioning Funding Plan ("DFP"). A Bates numbered copy is filed herewith (the confidential portions of particular pages for redaction are noted with brackets). In support hereof, NMI will submit an additional affidavit. The material and basis for withholding are more particularly described below.

DESCRIPTION OF MATERIAL

On or about June 21, 1994, NMI received a Demand for Information from the NRC. The request seeks information regarding (1) NMI's efforts to obtain financial assurance for decommissioning costs and (2) NMI's finances. On July 1, 1994, NMI has furnished non-public material including (1) federal tax returns, (2) information regarding negotiations (with decommissioning costs) to the Army, and (3) NMI financial projections shared with

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November 17, 1994

BY FEDERAL EXPRESS

John D. Kinneman, Chief
Site Decommissioning Section
Division of Radiation Safety and Safeguards
U.S. Nuclear Regulatory Commission Region I
475 Allendale Road
King of Prussia, PA 19406-1415

Re: NUCLEAR METALS, INC.

License Nos: SMB-179
SUB-1452

Docket Nos: 040-00672
040-08866

Control Nos: 117006 and 113010

Dear Mr. Kinneman:

On behalf of Nuclear Metals, Inc., I have enclosed a Supplemental Application in support of a request to keep confidential certain portions of NMI's July 1, 1994 Response to Demand for Information pursuant to 10 C.F.R. § 2.790(b). Also enclosed is a Bates-numbered copy of the July 1, 1994 Response. Confidential pages have been stamped "CONFIDENTIAL" and pages with confidential excerpts contain brackets and have been stamped both "CONFIDENTIAL" and "REDACT." NMI will also submit an additional affidavit. Thank you for your attention to this matter.

NUCLEAR METALS, INC.

By its attorney,

Robert A. McCall
Robert A. McCall

Enclosures

cc: Frank Vumbaco

117006 / 113010

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financial institutions in connection with funding proposals. The relevant page numbers are as follows:

<u>Federal Tax Returns</u>	<u>Financial Institution Information</u>	<u>Army</u>
291-639	60 (redact)	2-3 (redact)
	64	7-10 (redact)
	67	22 (redact)
	69-72	24 (redact)
		45-46 (redact)
		60 (redact)
		99
		252
		260-263
		267-72
		275-283

BASIS FOR WITHHOLDING

The information provided by NMI contains "trade secrets or privileged or confidential commercial or financial information" as defined in 10 C.F.R. § 2.790. NMI meets the following five part test for withholding from public disclosure this DFP information.

- (1) Whether the information has been held in confidence by its owner.
- (2) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;
- (3) Whether the information was transmitted to and received by the Commission in confidence;
- (4) Whether the information is available in public sources;
- (5) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner, the

amount of effort 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.

1. The information is held in confidence by NMI

NMI has held the information in the Response in confidence and has shared (1) information from the negotiations and decommissioning costs only with the Army, (2) the tax returns only with the IRS, and (3) financial projections with only potential funding sources and financial advisors.

2. NMI has customarily and for a rational basis held this information in confidence

NMI is a publicly held company in a very competitive market with another contractor with the Army. As a publicly held company, NMI has customary and legally mandated methods of releasing financial information such as annual reports and SEC filings. NMI does not, as a matter of course, disclose commercial information or trade secrets because of competitive pressures.

3. NMI has transmitted the information in confidence

NMI has marked the Response for Confidential Treatment.

4. The information is not available from public sources

NMI is not aware of any public source from which any third party can obtain the information. It is NMI's understanding that the Army has treated the negotiations as confidential and would withhold any such information from public disclosure pursuant to 5 U S C § 552(b)(4). Federal law prohibits the public disclosure by the IRS of tax returns. 26 U S C § 6103. The information regarding projections was provided in confidence to

financial institutions which were approached regarding financial assurance.

5 Public disclosure of the information may result in serious harm to NMI

Disclosure of trade secrets and commercial information will harm NMI with respect to its competitive position. First, the other contractor which manufactures depleted uranium kinetic energy penetrators for the Army could become privy to negotiations with the Army regarding decommissioning and learn confidential information about tax returns. In sum, a competitor may figure out various details such as NMI's costs of doing business which it could apply in competitive bidding for Army contracts.

Disclosure of financial information may also harm NMI by revealing information which is not in a form for disclosure to investors. NMI complies with very specific federal securities laws in disclosing financial information upon which the investing public relies. The type of financial information on (1) tax returns and (2) in financial projections are so sensitive by their nature that companies only disclose them under controlled circumstances. NMI believes that the release of this information may result in inappropriate reliance by the investing public

In addition, it is in the public interest that NMI exchange in a candid manner this type of sensitive information with NRC staff. Future submissions may contain more information of a sensitive nature. Also, the public interest will suffer if one competitor in bidding for government contracts obtains an unequal advantage.

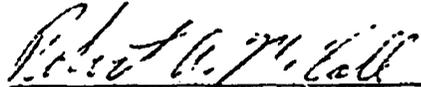
Inadequate protection would chill the openness of disclosure to the NRC with little, if any, countervailing public benefit.

CONCLUSION

For these reasons, NMI requests that the Response to Demand for Information be kept from public disclosure.

NUCLEAR METALS, INC

By its attorney.



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