



**NUCLEAR METALS, INC.**

**January 11, 1995**

**United States Nuclear Regulatory Commission  
Region I  
475 Allendale Road  
King of Prussia, PA 19406**

**Attn.: Mr. John D. Kinnaman**

**Re: NRC/Decommissioning Funding**

**Dear Mr. Kinnaman,**

**Enclosed please find originals of:**

- (1) Application to Withhold from Public Disclosure Material Provided at the December 8, 1994 Enforcement Conference (signed);**
- (2) Affidavit of Frank J. Vumbaco in Support of Application to Withhold from Public Disclosure Material Provided at the December 8, 1994 Enforcement Conference;**
- (3) Application to Withhold from Public Disclosure Material Relating to Decommissioning Cost Estimate (signed); and**
- (4) Affidavit of Frank J. Vumbaco in Support of Application to Withhold from Public Disclosure Material Relating to Decommissioning Cost Estimate.**

**Very Truly Yours,**

**Frank J. Vumbaco, Vice President  
Health and Safety**

**OFFICIAL RECORD COPY**

**Enclosures**

**ENCLOSURES TRANSMITTED HEREWITH  
CONTAIN NO CFR 2.798 INFORMATION**

**2229 Main Street, Concord, Massachusetts 01742 (508) 369-5410**

**JAN 13 1995**

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**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**

**APPLICATION TO WITHHOLD FROM PUBLIC  
DISCLOSURE MATERIAL PROVIDED AT  
THE DECEMBER 8, 1994 ENFORCEMENT CONFERENCE**

Pursuant to 10 C.F.R. § 2.790(b), Nuclear Metals, Inc. ("NMI") hereby applies to keep confidential its November 22, 1994 Presentation Binder originally provided to the United States Army and subsequently provided to the Nuclear Regulatory Commission ("NRC") at the December 8, 1994 Enforcement Conference. A Bates numbered copy is filed herewith (the confidential portions of particular pages for refraction are noted with brackets). In support hereof, NMI submits the Affidavit of Frank J. Vumbaco. The material and basis for withholding are more particularly described below.

**DESCRIPTION OF MATERIAL**

On November 22, 1994, NMI met with representatives of the Army to discuss the Army's funding for the disposition of material from the Holding Basin at NMI's Concord facility. During that meeting, NMI's consultant, John Jury of Engineering & Management Executives, Inc., provided a Presentation Binder to the Army. NMI marked the Presentation Binder as "NMI PROPRIETARY." The Presentation Binder contains information regarding

negotiations with the Army similar to other material for which NMI has previously sought confidential treatment by the NRC.

At the December 8, 1994 Enforcement Conference, NMI provided the NRC with a copy of the Presentation Binder in connection with the discussion regarding financial assurance for the decommissioning of the Holding Basin. At the Enforcement Conference, NRC staff agreed to keep from the public record the Presentation Binder pending a decision on this Application.

The relevant page numbers are as follows:

864  
868  
878  
881  
882  
883

#### **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 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 Presentation Binder in confidence and has shared information from the negotiations and decommissioning costs only with the Army and with the NRC in confidence.

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 requested confidential treatment of the Presentation Binder at the Enforcement Conference.

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).

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. The other contractor which manufactures depleted uranium kinetic energy penetrators for the Army could become privy to negotiations with the Army regarding decommissioning and could employ the information in competitive bidding for Army contracts.

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 November 22, 1994 Presentation Binder be kept from public disclosure.

**NUCLEAR METALS, INC.**

By its attorneys,



**Philip M. Cronin  
Robert A. McCall  
PEABODY & ARNOLD  
50 Rowes Wharf  
Boston, MA 02110  
(617) 951-2100**

PABOS:RMC:132087\_1

**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**

**AFFIDAVIT OF FRANK J. VUMBACO  
IN SUPPORT OF APPLICATION TO WITHHOLD  
FROM PUBLIC DISCLOSURE MATERIAL PROVIDED AT  
THE DECEMBER 8, 1994 ENFORCEMENT CONFERENCE**

**1. Frank J. Vumbaco, do hereby depose and state as follows:**

- 1. I am Vice President for Health and Safety of Nuclear Metals, Inc. ("NMI").**
- 2. NMI is a publicly-held corporation based in Concord, Massachusetts and is a holder of two licenses issued by the Nuclear Regulatory Commission ("NRC").**
- 3. NMI has filed herewith a Bates numbered copy of NMI's November 22, 1994 Presentation Binder. NMI has stamped "Confidential" each page which it seeks to withhold and has bracketed the material which it seeks to redact from particular pages.**
- 4. Among its activities, NMI manufactures depleted uranium kinetic energy penetrators for the United States Army. NMI is engaged in confidential discussions with the Army regarding decommissioning costs.**
- 5. On November 22, 1994, NMI met with representatives of the Army to discuss the Army's funding for the disposition of material from the Holding Basin at NMI's Concord**

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facility. During that meeting, NMI's consultant, John Jury of Engineering & Management Executives, Inc., provided a Presentation Binder to the Army. NMI marked the Presentation Binder as "NMI PROPRIETARY."

6. The Presentation Binder contains information regarding negotiations with the Army similar to other material for which NMI has previously sought confidential treatment by the NRC.

7. NMI has treated the information contained in the Presentation Binder as trade secrets or privileged or confidential commercial or financial information. The following Bates numbered pages contain such information:

864  
868  
878  
881  
882  
883

8. NMI has held the information shared during Army discussions in confidence and has shared it only with the Army or with the NRC in confidence. Upon information and belief, the Army would not disclose this information in response to a FOIA request.

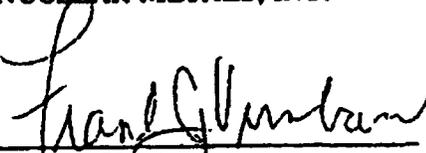
9. NMI does not as a matter of course disclose commercial information or trade secrets because of competitive pressures.

10. Disclosure of trade secrets and commercial information will harm NMI with respect to its competitive position. The other manufacturer of depleted uranium kinetic energy penetrators for the Army may potentially have access to information from Army

discussions while NMI will not have similar access to information regarding its competitor.

Signed under the pains and penalties of perjury this 31<sup>st</sup> day of December, 1994.

NUCLEAR METALS, INC.

  
\_\_\_\_\_  
Frank J. Vimbaco

FABOS:RMC:132106\_1

**TO CFR 2.790 INFORMATION**

**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-C8866**

**APPLICATION TO WITHHOLD FROM PUBLIC DISCLOSURE  
MATERIAL RELATING TO DECOMMISSIONING COST ESTIMATE**

Pursuant to 10 C.F.R. § 2.790(b), Nuclear Metals, Inc. ("NMI") hereby applies to keep confidential a May 15, 1994 submission regarding NMI's Decommissioning Funding Plan. Specifically, NMI requests that the Nuclear Regulatory Commission ("NRC") withhold from public disclosure a report title Decommissioning Cost Estimate ("DCE"). A Bates-numbered copy of the DCE and an Affidavit of Frank J. Vumbaco are filed herewith. The confidential material is on the following pages which have been stamped

**"CONFIDENTIAL":**

1359	1366
1360	1367
1361	1368
1363	1369
1364	1370
1365	1371

The material and basis for withholding are more particularly described below.

**1. Description of material**

The DCE was prepared with assistance from NMI's decommissioning consultant, Applied Consultants, Inc. ("ACI"). The report includes information regarding NMI's

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facilities, such as the physical lay out of each work area and the dimensions of manufacturing and other areas for decommissioning. The report may also provide detail as to NMI's staffing including wage scales for specific jobs and NMI's costs for labor, materials and supplies from outside providers.

2. 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:

- (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 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 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.

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December 16, 1994  
Page 3

a. The information is held in confidence by NMI

NMI has held the information in the DCE in confidence and has not made it generally available.

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

NMI is a publicly held company in a very competitive market for U.S. Army contracts with another manufacturer of depleted uranium penetrators. NMI does not, as a matter of course, disclose commercial information or trade secrets because of competitive pressures.

c. NMI has transmitted the information in confidence

NMI marked the DCE as "Company Private" prior to submission to the NRC.

d. 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 in the DCE. Similarly, NMI's relationship with its consultants is based upon a premise of confidentiality.

e. 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 position with its competitor which, because it manufactures kinetic energy penetrators in Tennessee (an Agreement State), is not required to submit to the NRC the type of DCE information submitted by NMI. Thus, the competitor may potentially have access to information regarding NMI while NMI may not have similar access to information regarding the competitor. In sum, the competitor may figure out various details such as NMI's costs of

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John D. Kinneman, Chief  
December 16, 1994  
Page 4

doing business which it could apply in bidding for Army contracts.

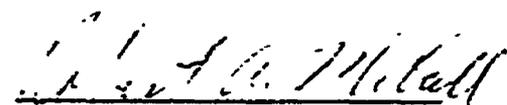
In addition, it is in the public interest that NMI exchange in a candid manner this type of sensitive information with NRC staff. NMI has submitted (and intends to continue to submit) to the NRC information of a sensitive nature. The DCE could become a roadmap to several aspects of NMI's operations for a competitor. For example, a competitor could ascertain (1) the comparative wage scales of the companies and (2) prices negotiated for shipment, disposal and storage of waste. Inadequate protection would chill the openness of disclosure to the NRC with little, if any, countervailing public benefit.

For these reasons, NMI requests that the DCE marked as Company Private be kept from public disclosure.

Respectfully Submitted,

NUCLEAR METALS, INC.

By its attorneys,

  
Philip M. Cronin  
Robert A. McCall  
PEABODY & ARNOLD  
50 Rowes Wharf  
Boston, MA 02110  
(617) 951-2100

PAROS:RMC:133516\_1

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**UNITED STATES NUCLEAR REGULATORY COMMISSION  
REGION I**

**IN RE NUCLEAR METALS, INC.**

**License Nos: SMB-179  
SUB-1452**

**Docket Nos: 040-00672  
C40-08866**

**Control Nos: 117006  
113010**

**AFFIDAVIT OF FRANK J. VUMBACO  
IN SUPPORT OF APPLICATION TO WITHHOLD FROM PUBLIC DISCLOSURE  
MATERIAL RELATING TO DECOMMISSIONING COST ESTIMATE**

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**I, Frank J. Vumbaco, do hereby depose and state as follows:**

- 1. I am Vice President for Health and Safety at Nuclear Metals, Inc. ("NMI").**
- 2. NMI is a publicly-held corporation based in Concord, Massachusetts and is a holder of two licenses issued by the Nuclear Regulatory Commission ("NRC").**
- 3. Among its activities, NMI manufactures depleted uranium kinetic energy penetrators for the United States Army. Presently, NMI has only one competitor in this field.**
- 4. On May 15, 1994, I submitted to the NRC a Decommissioning Cost Estimate ("DCE"), prepared by outside consultants, on behalf of NMI. Specifically, NMI requested that the NRC withhold from public disclosure the DCE and marked the document "Company Private." A Bates-numbered copy of the DCE is filed herewith.**
- 5. NMI has not provided this report any other party and the information was prepared with NMI's decommissioning consultant, Applied Consultants, Inc. ("ACI").**

6. The report includes detail as to NMI costs of doing business including (1) wage scales for specific jobs and (2) quotes for labor, materials and services from outside sources on the following page numbers:

1359	1366
1360	1367
1361	1368
1363	1369
1364	1370
1365	1371

7. NMI has treated the information contained in the DCE as trade secrets or privileged or confidential commercial information.

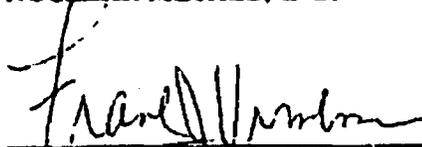
8. NMI does not as a matter of course disclose commercial information or trade secrets because of competitive pressures.

9. Disclosure of trade secrets and commercial information will harm NMI with respect to its competitive position. The other manufacturer of depleted uranium kinetic energy penetrators for the Army may potentially have access to information regarding NMI while NMI will not have similar access to information regarding its competitor.

10. Future information provided to the NRC could provide a competitor with a roadmap to aspects of NMI's operations. For example, a competitor could ascertain (1) the comparative wage scales of the companies and (2) prices negotiated for shipment, disposal and storage of waste. A competitor may figure various details as NMI's costs of doing business which it could apply in competitive bidding for Army contracts.

Signed under the pains and penalties of perjury this 31<sup>st</sup> day of December, 1994.

NUCLEAR METALS, INC.

  
\_\_\_\_\_  
Frank J. Vumbaco

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