PERFORMANCE CONTRACTING INC
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U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

February 16, 2011
Transmittal ID: PCI-2011.02.16 Rev 0

Subject: **REQUEST FOR WITHHOLDING PROPRIETARY INFORMATION FROM PUBLIC DISCLOSURE PURSUANT TO 10 CFR 2.390**
Performance Contracting, Inc.
SFS Team Large Flume Test Protocol

Reference: Proprietary Documents

PCI Reference No. **PCI-2011.02.16 Rev 0**

1. A DVD labeled **Narrow Flume Video** prepared by Alden, PCI Identification No. **PCI-2011.02.16**.

2. An Alden PowerPoint® presented December 2, 2010 to the NRC in our meeting at Rockville, MD; e-file# **PCI DEC 2 2010 PowerPoint.pdf.** The title of the PowerPoint presentation is **Flume Scaling Effects**, dated 12/1/2010

Dear Sir:

Performance Contracting Inc. (PCI) is requesting the two referenced items above; related to our discussions with the NRC staff on December 2, 2010 about the SFS Team's Large Flume Testing protocol be classified as proprietary in accord with 10 CFR 2.390.

It should be noted that PCI has previously submitted other proprietary documents pursuant to 10 CFR 2.390 regarding this general issue and those documents have been classified as proprietary previously. We request this information not be made public as well.

The purpose of this information was to show on video the distribution of fibers into narrow test flumes; and a PowerPoint® presentation regarding Flume Scaling Effects. This submittal is part of our approach to resolve concerns of Staff regarding the SFS Team's Large Flume Testing Protocol implemented for licensees to resolve GSI-191.

Clients of PCI who are licensees will also be provided access to this proprietary information for their reference and use in future correspondence with the NRC.

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NRR

PCI requests this document be classified as proprietary because the intellectual property of Performance Contracting, Inc. / Alden Research Laboratory developed this information at considerable expense to the company. Public release of this content would allow this content to be used by others, resulting in commercial detriment to Performance Contracting, Inc. Accordingly, we have attached an affidavit pursuant to 10 CFR 2.390 to this letter. We note that this document has never been disclosed to the public. The following attachment is provided:

Attachments Affidavit identified as **PCI-2011.02.16 Rev 0** requesting the two items referenced above be classified as Proprietary

A DVD labeled **Narrow Flume Video** prepared by Alden, PCI Identification No. **PCI-2011.02.16**

An Alden PowerPoint® presented December 2, 2010 to the NRC in our meeting at Rockville, MD; e-file# **PCI DEC 2 2010 PowerPoint.pdf.** The title of the PowerPoint presentation is **Flume Scaling Effects**, dated 12/1/2010. Also identified as PCI Proprietary Document **PCI-2011.02.16** at the top of each slide.

I am responsible and authorized by Performance Contracting, Inc. for executing the **Attachment 1** Affidavit and I am located at:

Performance Contracting, Inc.
Engineered Systems Group
16047 West 110th Street
Lenexa, KS 66219

We greatly appreciate the USNRC's effort, specifically as it relates to the Safety Issues Resolution Branch's attention to the review of PCI's documents and reports.

Sincerely,

James M. Bleigh
PCI / Engineered Systems Group Manager

cc: Blake Purnell; Project Manager, DPR/PGCB with attachments, or

Mr. Stewart Bailey, Chief Safety Issues Resolution Branch
Division of Safety Systems
Office of Nuclear Reactor Regulation

AFFIDAVIT PURSUANT TO 10 CFR 2.390

I, James M. Bleigh, being duly sworn, depose and state as follows:

(1) I, the Performance Contracting, Inc. (PCI), Manager of the Engineered Systems Group (ESG) have requested the NRC to discuss and review with myself and other invited persons to discuss the proprietary elements of the SFS Team testing protocol implemented for licensees to resolve the GSI-191 issue. These discussions have and will include content PCI has classified as proprietary. This affidavit includes another document applicable to these discussions and is described in paragraph (2) which is sought to be withheld, and for which I am authorized to apply for its withholding.

(2) The information sought to be discussed and related to the implementation of the SFS Team's testing protocol in this meeting is as follows. This information is considered proprietary to Performance Contracting, Inc. and is appropriately annotated as such.

1. A DVD labeled **Narrow Flume Video** prepared by Alden, PCI Identification No. **PCI-2011.02.16**

2. An Alden PowerPoint® document presented December 2, 2010 to the NRC in our meeting at Rockville, MD; e-file# **PCI DEC 2 2010 PowerPoint.pdf**. The title of the PowerPoint document is **Flume Scaling Effects**, dated 12/1/2010. Also identified as PCI Proprietary Document **PCI-2011.02.16** at the top of each slide.

(3) In making this application for withholding of proprietary information of which it is the owner, Performance Contracting, Inc. relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4) and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations I0CFR Part 9.17(a)(4), 2.390(a)(4), and 2.390(b)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is all "confidential commercial information", and some portions also qualify under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).

(4) Some examples of categories of information which fit into the definition of proprietary information are:

AFFIDAVIT PURSUANT TO 10 CFR 2.390

a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by Performance Contracting, Inc.'s competitors without license from Performance Contracting, Inc. constitutes a competitive economic advantage over other companies;

b. Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.

c. Information which reveals cost or price information, production, capacities, budget levels, or commercial strategies of Performance Contracting, Inc., its customers, or its suppliers;

d. Information which reveals aspects of past, present, or future Performance Contracting customer-funded development plans and programs of potential commercial value to Performance Contracting, Inc.;

e. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs 4.a and 4.b above.

(5) The information sought to be withheld is being submitted to the NRC in confidence. The information (including that compiled from many sources) is of a sort customarily held in confidence by Performance Contracting, Inc., and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by Performance Contracting, Inc. No public disclosure has been made, and it is not available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (6) and (7) following.

(6) Initial approval of proprietary treatment of a document is made by the manager of the originating component, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents within Performance Contracting, Inc. is limited on a "need to know" basis.

AFFIDAVIT PURSUANT TO 10 CFR 2.390

(7) The procedure for approval of external release of such a document typically requires review by the staff manager, project manager, principal scientist or other equivalent authority, by the manager of the cognizant marketing function (or his designee), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside Performance Contracting, Inc. are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.

(8) The information classified as proprietary was developed and compiled by Performance Contracting, Inc. at a significant cost to Performance Contracting, Inc. This information is classified as proprietary because it contains detailed descriptions of analytical approaches and methodologies not available elsewhere. This information would provide other parties, including competitors, with information from Performance Contracting, Inc.'s technical database and the results of evaluations performed by Performance Contracting, Inc. A substantial effort has been expended by Performance Contracting, Inc. to develop this information. Release of this information would improve a competitor's position because it would enable Performance Contracting, Inc.' s competitor to copy our technology and offer it for sale in competition with our company, causing us financial injury.

(9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to Performance Contracting, Inc.'s competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of Performance Contracting, Inc.'s comprehensive Sure-Flow® Strainer technology base, and its commercial value extends beyond the original development cost. The value of the technology base goes beyond the extensive physical database and analytical methodology, and includes development of the expertise to determine and apply the appropriate evaluation process. The research, development, engineering, and analytical costs comprise a substantial investment of time and money by Performance Contracting, Inc.

The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

Performance Contracting, Inc.'s competitive advantage will be lost if its competitors are able to use the results of the Performance Contracting, Inc. experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions.

AFFIDAVIT PURSUANT TO 10 CFR 2.390

The value of this information to Performance Contracting, Inc. would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive Performance Contracting, Inc. of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Mr. James M. Bleigh, being duly sworn, deposes and says:

That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at Lenexa, Kansas, this 16th day of February, 2011.

James M. Bleigh
PCI / Engineered Systems Group Manager

ALICIA J. HAYES NOTARY PUBLIC STATE OF KANSAS

Subscribed and sworn before me this 16th day of February, 2011.

Notary Alicia J Hayes Commission Expires 8-10-2014