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July 27, 2011

BY HAND DELIVERY TO  
Douglas Fremont, Chief  
Defense Nuclear Security NA-70  
National Nuclear Security Administration  
1000 Independence Avenue S.W.  
Washington, D.C. 20585-0103

**DOCKETED**  
July 27, 2011, 2011 (11:54 a.m.)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

SUBJECT: *Request for access to UCNI related to MOX FFF operating license application*

Dear Mr. Fremont:

Pursuant to 10 C.F.R. § 1017.21, I am writing to request limited access by myself and three other individuals to documents that constitute Unclassified Nuclear Security Information ("UCNI") and have been identified as relevant to issues in contention in the U.S. Nuclear Regulatory Commission's operating license proceeding for the proposed Mixed Oxide Fuel Fabrication Facility ("MOX FFF"). The sole purpose of this request is to allow representatives of Blue Ridge Environmental Defense League, Inc. ("BREDL") and Nuclear Watch South, Inc. ("NWS") to prepare for an adjudicatory hearing before the NRC regarding the adequacy of SAMS' operating license application to comply with NRC regulations for material control and accounting ("MC&A").

This application is supported by the operating license applicant, Shaw Areva MOX Services ("SAMS"), and by the Staff of the NRC.

**Background**

This request for access to UCNI documents relates to my clients' participation in the operating license proceeding for the proposed MOX FFF, which began in 2007 with the publication of the hearing notice in the Federal Register, 72 Fed. Reg. 12,204 (March 15, 2007). The history of the proceeding is described in a recent decision by the Atomic Safety and Licensing Board ("ASLB") panel that was appointed to hear the case: *Shaw Areva MOX Services, Inc. (Mixed Oxide Fuel Fabrication Facility)*, LBP-11-09, \_\_ NRC \_\_ (April 1, 2011) ("LBP-11-09"). See Attachment 1. To summarize in relevant part, in 2008 the ASLB granted BREDL, NWS and the Nuclear Information and Resources Service, Inc. (collectively the "Intervenors") a hearing on a contention challenging the adequacy of SAMS' measures for processing radioactive waste at the facility. In LBP-11-09, the ASLB expanded the scope of the hearing to include three additional contentions by the Intervenors which asserted that SAMS' Fundamental Nuclear Material Control Plan ("FNMCP") is inadequate to satisfy NRC regulations governing Material Control and Accounting ("MC&A"). A statement of the contentions (numbered 9, 10, and 11) is appended to LBP-11-09.



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In 2008, the ASLB panel issued a Protective Order setting forth requirements for the protection of "Controlled Information," including discovery documents categorized by the NRC as Sensitive Unclassified Nuclear Security Information ("SUNSI"). *See* Attachment 2. The ASLB panel also approved a Nondisclosure Declaration which was signed by four individuals: Diane Curran, undersigned counsel for the Intervenor; Dr. Edwin S. Lyman, Intervenor's expert witness who is a Senior Staff Scientist with the Union of Concerned Scientists; Glenn Carroll, Coordinator of NWS; and Louis A. Zeller, Science Director of BREDL (collectively the "Requesters"). *See* Attachments 3, 4, 5 and 6, respectively.<sup>1</sup>

In the spring of 2011, following the issuance of LBP-11-09, counsel for SAMS notified the ASLB and parties that some of the documents that are relevant to Contentions 9, 10, and 11 are not only categorized as SUNSI by the NRC but are also deemed to constitute UCNI by the U.S. Department of Energy ("DOE"). Therefore, in order to facilitate access by the Requesters to UCNI documents identified in the discovery process, on June 29, 2011, the parties to the case jointly moved the ASLB to modify the Protective Order to include UCNI documents. *See* Attachment 7. The motion was approved yesterday by the ASLB panel. *See* Attachment 8. Document production on Contentions 9, 10, and 11 began in June of 2011, and a hearing is expected to commence in the fall.

#### **Discussion and Request for Access to UCNI**

Access to discovery documents that have been identified as UCNI by the DOE is sought by the Requesters, who are also parties to the NRC's Protective Order: Diane Curran, Dr. Edwin S. Lyman, Glenn Carroll, and Louis Zeller. As required by 10 C.F.R. § 1017.21(a), the following information is provided to support their request:

(1) *Name, current residence or business address, birthplace, birth date, and country of citizenship of the person submitting the request:*

Name:	Diane Curran
Business address:	Harmon, Curran, Spielberg & Eisenberg, L.L.P. 1726 M Street N.W., Suite 600 Washington, D.C. 20036
Birthplace:	Bridgeport, CT
Birth date:	March 29, 1954
Citizenship:	U.S.

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<sup>1</sup> Although NIRS is one of the Intervenor in the proceeding, its representatives have not sought access to SUNSI under the Protective Order and do not seek access to UCNI in this request.

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Name: Edwin S. Lyman  
Business address: Union of Concerned Scientists  
1825 K Street N.W., Suite 800  
Washington, D.C. 20006  
Birthplace: New York, NY  
Birth date: June 21, 1964  
Citizenship: U.S.

Name: Glenn Carroll  
Business address: Nuclear Watch South  
139 Kings Highway  
Decatur, GA 30030  
Birthplace: East Orange, NJ  
Birth date: March 17, 1953  
Citizenship: U.S.

Name: Louis A. Zeller  
Business address: Blue Ridge Environmental Defense League  
226 Hamilton Lane  
Glendale Springs, NC 28629  
Birthplace: Bay Shore, NY  
Birth date: January 23, 1949  
Citizenship: U.S.

*(2) A description of the specific UCNI for which limited access is being requested:*

Requesters seek limited access to the UCNI version of the Physical Protection Plan for the proposed MOX FFF, upon which SAMS has stated it intends to rely in the hearing on Contentions 9, 10, and 11. Requesters also seek limited access to other UCNI documents that have been identified by SAMS as relevant to the contested MC&A issues in the NRC's MOX FFF operating licensing proceeding, including the following:

- Phillips, Physical Protection Plan 16Dec09 Part 1 (3/8/10);
- Coleman, MC&A Measurement Points for MFFF (10/5/10);
- Coleman, Copy of MC&A Measurement Points for MFFF (10/11/10);
- SRS, 201-2009-2-Annex L Threat to Personnel (7/7/10);
- Gardner, DCS01 AAJ DS DOB E 40113 (3/4/11).



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- Whittington, FNMCP rev\_April 2010 (12/15/10)<sup>2</sup>

We anticipate that during discovery and/or the evidentiary hearing, additional documents may be identified which constitute UCNI. Therefore we request the DOE to make a general determination that the Requesters be granted limited access to all UCNI identified by SAMS, the NRC Staff, or the ASLB panel as relevant to this proceeding.

*(3) A description of the purpose for which the UCNI is needed:*

The purpose of this request is to allow Intervenors' counsel and expert, as well as authorized representatives of NWS and BREDL, to prepare for a hearing on Contentions 9, 10, and 11 by reviewing relevant documents. The request is consistent with NRC regulations which provide for discovery of relevant information in NRC licensing proceedings. *See* 10 C.F.R. § 2.336(a) and (c). In addition, Ms. Carroll and Mr. Zeller as representatives of BREDL and NWS, also wish to be able to attend any portions of the hearing that are closed in order to discuss SUNSI and UCNI.

*(4) Certification of the requester:*

*See* attached Certifications Pursuant to 10 C.F.R. § 1017.21(a)(4) by Diane Curran (Attachment 9), Edwin S. Lyman (Attachment 10), Glenn Carroll (Attachment 11), and Louis A. Zeller (Attachment 12).

*(5) Additional Information With Respect to Criteria in 10 C.F.R. § 1017.21(b)(1)-(3):*

*(1) Sensitivity of the UCNI for which limited access is being requested:*

The requested documents are related to the proposed security and MC&A measures for the proposed MOX FFF, which are intended to protect strategic special nuclear material from theft or diversion. Given their security-related subject matter, both the DOE and the NRC treat the requested documents as SUNSI and UCNI. The Requesters are not aware of any additional sensitivity criteria that are applicable to the documents.

*(2) Likelihood that requester will disseminate the UCNI to unauthorized individuals*

Several factors make it extremely unlikely that any of the Requesters will disclose the requested UCNI to unauthorized individuals. First and foremost, the Requesters are aware that the information they are requesting is sensitive from a security standpoint and

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<sup>2</sup> This revision to the FNCMP, which is categorized by the NRC as SUNSI, was previously provided to us under the ASLB panel's 2008 Protective Order.

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therefore have agreed to comply with the terms of the ASLB's 2008 Protective Order as modified by the ASLB panel's order of July 26, 2011. Requesters intend to sign and submit the modified nondisclosure declaration that is attached to the revised Protective order as soon as possible.

Second, the NRC's Protective Order and Nondisclosure Declaration track the requirements of 10 C.F.R. Part 1017, reflecting both the procedural requirements for protection of UCNI from unauthorized disclosure and the civil and criminal penalties provided by Part 1017 in the event of a breach.

In addition, all four individuals have previously demonstrated their ability and willingness to protect sensitive security information from unauthorized disclosure. They have had access to Controlled Information, including SUNSI, since 2008, and have not disclosed it to any unauthorized individual. In addition, undersigned counsel Diane Curran, Edwin Lyman, and Glenn Carroll had limited access to security-related information regarding the MOX FFF Construction Authorization Request ("CAR") for several years during the NRC's hearing on the CAR, and complied with NRC requirements for protection of the information during that time. Finally, Dr. Lyman and I have active Level L security clearances, for which a determination of our trustworthiness has been made by the NRC.

Because the hearing is due to start this fall, we would appreciate your prompt consideration of this request. Please do not hesitate to call me if you have any questions about it.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Curran".

Diane Curran

Attachments: As stated

Cc w/o Atts.: Donald J. Silverman, Esq. (SAMS Counsel)  
Anna Vinson, Esq. (SAMS Counsel)  
Brett Klukan, Esq. (NRC Staff Counsel)  
Michael C. Farrar, ASLB Chairman  
Nicholas g. Trikouros, ASLB  
Lawrence G. McDade, ASLB

## Hearing Docket

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**From:** Diane Curran [dcurran@harmoncurran.com]  
**Sent:** Wednesday, July 27, 2011 11:54 AM  
**To:** avinson@morganlewis.com; Klukan, Brett; Scott, Catherine; dsilverman@morganlewis.com; elyman@ucsusa.org; atom.girl@mindspring.com; bredl@skybest.com; Tucker, Katie; Sexton, Kimberly; McDade, Lawrence; maryolson@main.nc.us; Farrar, Mike; Trikouros, Nicholas; Docket, Hearing; OCAAMAIL Resource; Harich, Patricia; tmatthews@morganlewis.com  
**Subject:** Letter: Request for access to UCNI related to MOX FFF operating license application  
**Attachments:** Request for access to UCNI related to MOX FFF operating license application.PDF

Dear ASLB and parties,

Attached is a courtesy copy of a letter to the U.S. Department of Energy requesting limited access to discovery documents in the MOX FFF licensing case that have been designated as UCNI by the DOE.

Diane Curran

Received: from mail1.nrc.gov (148.184.176.41) by TWMS01.nrc.gov  
(148.184.200.145) with Microsoft SMTP Server id 8.3.159.2; Wed, 27 Jul 2011  
11:53:58 -0400

X-Ironport-ID: mail1

X-SBRS: None

X-MID: 45519256

X-fn: Request for access to UCNI related to MOX FFF operating license  
application.PDF

X-IronPort-AV: E=Sophos;i="4.67,276,1309752000";  
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Received: from mail.harmoncurran.com ([173.13.203.242]) by mail1.nrc.gov with  
ESMTP; 27 Jul 2011 11:53:55 -0400

Content-Class: urn:content-classes:message

MIME-Version: 1.0

Content-Type: multipart/mixed;

boundary="----\_=\_NextPart\_001\_01CC4C75.6338F7D4"

Subject: Letter: Request for access to UCNI related to MOX FFF operating license application

X-MimeOLE: Produced By Microsoft Exchange V6.5

Date: Wed, 27 Jul 2011 11:53:48 -0400

Message-ID: <3A9F01B3843EC648A26775F2431967CCF69060@HARMON.hcse.com>

X-MS-Has-Attach: yes

X-MS-TNEF-Correlator:

Thread-Topic: Letter: Request for access to UCNI related to MOX FFF operating license  
application

thread-index: AcxMZ8B1RT/43iAHQO+GRxze0xXoygADSWGw

From: Diane Curran <dcurran@harmoncurran.com>

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