

May 7, 2013

NRC FOIA/PA Officer
U.S. Nuclear Regulatory Commission
Mailstop T-5 F09
Washington, DC 20555-0001
FOIA.resources@nrc.gov

FOIA REQUEST
Case No: 2013-0240
Date Rec'd: 5/8/13
Specialist: McCullen
Related Cases:

SUBJECT: *Freedom of Information Act Request*

Dear NRC FOIA/PA Officer:

On behalf of San Luis Obispo Mothers for Peace ("SLOMFP"), and pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., I am writing to request you to release the following documents:

1. All records relating to research, assessments, or studies conducted since January 2007 regarding the accident risks (including accidents caused by unintentional events and attacks) posed by wet or dry storage of spent nuclear reactor fuel. The information requested includes data, assumptions, computer programs, quantitative and qualitative results, and analyses. This request covers but is not limited to:

(a) The spent fuel pool scoping study described in a letter from R.W. Borchardt to Dr. J. Sam Armijo (May 23, 2012) (ML12137A343).

(b) To the extent it differs from the study described in paragraph (a) above, the spent fuel pool scoping study described in a March 13, 2013 session of the Regulatory Information Conference ("RIC") entitled Spent Fuel Safety. A transcript of the RIC session can be found on the NRC's website at <https://ric.nrc-gateway.gov/agenda.aspx>. The spent fuel pool scoping study is mentioned at page 41.

(c) Any research, assessments, or studies of sabotage risks to spent fuel in dry storage as described at page 2 (Issue 4) of SRM-SECY-07-0148, Memorandum from Annette L. Vietti-Cook to Luis A. Reyes re: Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage (Dec. 18, 2007) (ML073530119). The types of accident risks covered by this aspect of the request are also described at page 14 of SECY-07-0148, Memorandum from Luis A. Reyes to NRC Commissioners re: Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage (Aug. 28, 2007) (ML080030050) ("for example, adversaries using explosives to create kinetic, shear, or hydrodynamic weapons effects to penetrate a cask's containment barrier").

(d) Any research, assessments, or studies of the deterioration of high burnup spent fuel due to prolonged storage, potential damage during transfer from a spent fuel pool to a cask, or inter-cask transfers done or being planned pursuant to the needs identified in NRC's paper "Identification and Prioritization of the Technical Information Needs Affecting Potential Regulation of Extended Storage and Transportation of Spent Nuclear Fuel, May 2012 (Draft Report for Comment) (ML120580143).

(e) Any documents related to the Extended Storage Collaboration Program (ESCP), which is described at page 3 of a September 11, 2012 letter from J. Sam Armijo, ACRS, to Allison Macfarlane, NRC (ML12255A067).

2. All records of the assertedly "significant additional analyses" of spent fuel pool risks, performed since September 11, 2001, that "support the view that the risk of a successful terrorist attack (i.e., one that results in an SFP zirconium fire) is very low." The Attorney General of Commonwealth of Massachusetts, The Attorney General of California; Denial of Petitions for Rulemaking, 73 Fed. Reg. 46,204, 46, 207 (Aug. 8, 2008). These documents are collectively referred to in the Federal Register as "Sandia Studies." *Id.* The requested Sandia Studies include but are not necessarily limited to the two reports identified in the Federal Register Notice, entitled "Mitigation of Spent Fuel Pool Loss-of-Coolant Inventory Accidents and Extension of Reference Plant Analyses to Other Spent Fuel Pools," Sandia Letter Report, Rev. 2 (Nov. 2006) and "MELCOR 1.8.5 Separate Effect Analyses of Spent Fuel Pool Assembly Accident Response" (June 2003). SLOMFP believes the NRC may have additional reports responsive to this request that were not identified in the Federal Register notice.

In the Federal Register notice, the NRC asserts that the Sandia Studies constitute "sensitive security related information and are not available to the public." 73 Fed. Reg. at 46,207-08. The NRC claims to have complied with FOIA by publicly releasing a redacted document vaguely described as a "version of the Sandia Studies, with substantial redactions." 73 Fed. Reg. at 46,207 and n.6. The publicly available document appears to be an amalgamation of selected pages from several different unidentified studies: the title page and table of contents do not correspond to some of the other contents of the document. Therefore it does not comply with the FOIA or NRC's implementing regulations. *See* 10 C.F.R. § 9.19 (requiring segregation of information that is exempt from disclosure). Accordingly, we requests that you separately identify, and redact if necessary, each and every document responsive to this request.

3. NRC's "site evaluations of every [spent fuel pool] in the United States," referred to in the above-cited Federal Register notice, 73 Fed. Reg. at 46,208.

For purposes of this request, the term "record" means: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers,

invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazines or newspaper articles or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term "record" also includes any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

If it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure pursuant to 10 C.F.R. § 9.17, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the non-exempt portions of the records.

Request for Waiver of Fees

SLOMFP hereby requests that all fees in connection with this FOIA request be waived in accordance with 10 C.F.R. §§ 9.39(a) and 9.41(c). As provided in § 9.41(c), the NRC must:

waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

SLOMFP satisfies the NRC's criteria for a fee waiver in the following respects:

- a. The requested disclosures concern the operations and activities of the Federal Government because they seek information regarding a significant regulatory issue: the NRC's oversight of spent fuel storage, based on its evaluation of the safety and environmental risks of spent fuel storage accidents.
- b. The disclosure of the requested documents will significantly contribute to the public's understanding of the operations and activities of the NRC with respect to nuclear regulatory matters. The adequacy of NRC's regulation of spent fuel storage is a controversial subject. While the NRC previously denied that spent fuel storage posed any risk at all to public health and safety or the environment, it now acknowledges the potential that stored spent fuel may ignite and cause serious accidents. This risk exists both for pool-stored spent fuel and fuel stored

in dry casks. Although the NRC claims the risk is low, it is currently conducting new studies on the risks. Recently, the U.S. Court of Appeals for the D.C. Circuit rejected an environmental assessment of spent fuel pool storage risks by NRC on the ground that it was insufficiently supported. *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

The documents requested by SLOFMP contain both new and previously existing but undisclosed technical data and analyses regarding spent fuel storage risks. During the past decade, the NRC has released almost no information about the safety and environmental risks of spent fuel storage, chiefly on security-related grounds. Recently, the NRC has begun and partially completed new studies of spent fuel storage risks. It has promised to share the studies and their results with the public in late 2013. See NRC statements in transcript of Regulatory Information Conference session on March 13, transcript at 41-42. SLOMFP understands that a portion of the studies is already complete, and seeks access to as much information as possible under the FOIA. In addition, SLOMFP seeks as much information as possible under the FOIA regarding past studies of spent fuel storage risk that were withheld from the public on national security grounds. The level of secrecy regarding these studies has been so high that even some of the titles of the studies have not been disclosed. SLOMFP does not believe the NRC's handling of these documents has complied with FOIA, and now seeks a FOIA review and disclosures that properly identify and disclose releasable portions of the documents.

Founded in 1969, with more than 3,000 members and supporters, SLOMFP will disseminate the disclosed information to the public through its website, www.mothersforpeace.org, through its media communications program, and through educational programs and events.

Disclosure of the requested documents will also assist SLOMFP in commenting on the NRC's forthcoming environmental impact statement ("EIS") regarding the risks of long-term pool storage and dry storage of spent fuel. See "Request for comments on the notice of intent to prepare and (sic) environmental impact statement and notice of public meetings," 77 Fed. Reg. 65,137 (Oct. 25, 2012). The NRC has stated that it expects to issue the draft EIS in September 2013. See <http://www.nrc.gov/waste/spent-fuel-storage/wcd/schedule.html>. It is not clear whether information about the requested spent fuel scoping study will be included in the draft EIS or whether the study's results will be released in time to be incorporated into SLOMFP's comments on the draft EIS.

SLOMFP and 24 other nonprofit environmental organizations have collectively retained Drs. Arjun Makhijani and Gordon Thompson, experts on spent fuel storage safety and environmental impacts, to evaluate the requested documents and to include their evaluation in comments on the draft EIS. These organizations and Drs. Makhijani and Thompson already have commented on the scoping notice for the draft EIS. See Comments by Alliance for Nuclear Accountability et al. on Scope of Waste Confidence Environmental Impact Statement (Jan. 2, 2013); attached Declaration of Dr. Arjun Makhijani Regarding the Scope of Proposed Waste Confidence Environmental Impact Statement (Jan. 1, 2013); and attached Declaration of 2 January 2013 by Gordon R. Thompson: Recommendations for the US Nuclear Regulatory Commission's Consideration of Environmental Impacts of Long-Term, Temporary Storage of Spent Nuclear Fuel or Related High-Level Waste (Jan. 2, 2013) (ML13007A441). The requested documents



will help them to evaluate and prepare comments on the NRC's claims in the draft waste confidence EIS regarding the environmental impacts of extended storage of spent fuel in pools and dry casks.

c. The requested materials will not be used for SLOMFP's commercial use or gain. SLOMFP is a non-profit organization whose sole purpose in requesting the documents is to educate itself, its members, and the general public regarding the risks of spent fuel storage and NRC's regulatory process.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise me of the amount of any proposed search, review, and reproduction charges before those activities are carried out.

Please respond within 20 business days, as provided by 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions regarding this request, please contact me at 202-328-3500.

Thank you very much for your attention to this matter.

Sincerely,

/s/

Diane Curran

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Counsel to SLOMFP