

Case No.: 2014-0012
Date Rec'd: 10/18/13
Specialist: Graff
Related Case: 2014-0003

TALLAHASSEE AREA COMMUNITY, INC.
P.O. Box 343
Canon City, CO 81215

October 15, 2013

VIA E-MAIL ATTACHMENT – CONFIRMATION REQUESTED

U.S. Nuclear Regulatory Commission
Mail Stop T-5 F09
Washington, DC 20555-0001
FOIA.resource@nrc.gov

Re: EXPEDITED FREEDOM OF INFORMATION ACT REQUEST
(RESPONSE DEADLINE 10 WORKING DAYS): Records Created or Obtained
Regarding Regulation of Ablation

Dear Madam or Sir:

Please allow me to withdraw my FOIA request on behalf of the Tallahassee Area Community, Inc., date October 2, 2013, and substitute this request to address the areas of concern concerning our request for a fee waiver. This request supercedes our request of October 2, 2013.

On behalf of Tallahassee Area Community, Inc. (TAC), the undersigned hereby submits this Freedom of Information Act ("FOIA") request pursuant to the requirements of 5 U.S.C. §552(a). Please provide your written confirmation (preferably by e-mail) upon the receipt of this request.

This FOIA request is directed to you as the person likely to have control and/or access to the requested agency records. Please also notify the appropriate agency personnel and other FOIA Officer(s) to ensure that a full search of the agency, including, but not limited to NRC Region IV, for responsive records is conducted. In order to conserve paper resources, electronic copies of the agency records are preferred wherever possible.

First, please provide any and all agency records of the Nuclear Regulatory Commission ("NRC") relating to permit applications and issuance, or correspondence relating to use of a uranium processing technology known as "ablation" or "impact ablation" but not including "laser ablation". This request is limited to documents created or obtained by NRC after January 1, 2011 and up to the date the NRC responds to this request.

Second, please provide all agency records of the NRC created or obtained since January 1, 2011, concerning the project listed below, including, but not limited to, all correspondence and records of correspondence, whether by letter, email or any other electronic method and including all meeting or teleconference notes, phone notes, or minutes, and all invoices, bills, or similar records referencing such communications.

Ablation Technologies LLC, 1450 North 7 Mile Road, Casper, Wyoming 82604,

developed and patented ablation technology to mechanically process uranium ore to concentrate uranium oxide into approximately 10 percent of the uranium mass. In 2012, an Australian company, Black Range Minerals, Ltd, formed a joint venture with Ablation Technologies to commercialize the technology under the auspices of an entity called Mineral Ablation LLC. This matter is of concern to TAC because Black Range minerals owns the mineral rights to a uranium deposit in northwest Fremont County, Colorado, in a section known as the Tallahassee area.

A semi-commercial ablation unit, rated at 5 tons per hour, has been under construction at the Casper, WY facility and a demonstration was held for investors, analysts and potential customers in September 2013, allegedly using non-uranium bearing rock. Arrangements have been made between Ablation Technologies - Black Range Minerals and Nuvemco LLC, the owner of a 30-plus year old "October Pile" consisting of 10,000 tons of surface stored uranium ore in Mesa County, Colorado, for the shipment of 100 tons to Casper to be processed by the ablation unit and ultimately to be converted to yellowcake at White Mesa Mill in Blanding, UT. If the initial amount of uranium is successfully processed the machinery will be relocated to Colorado to process the entire October Pile.

Third, please provide all agency records of the NRC created or obtained since January 1, 2011, that contain communications or records of communications involving Ablation Technologies LLC, Black Range Minerals Ltd, Black Range Minerals-Colorado LLC, Mineral Ablation LLC, Nuvemco LLC and Azarga Resources (a Hong Kong based company with significant stock holdings in Black Range Minerals) whether by letter, email or any other electronic method and including all meeting or teleconference notes, phone notes, or minutes, and all invoices, logs, bills, or similar records referencing such communications.

Even where agency records may be potentially subject to FOIA Exemptions, a strong public interest weighs in favor of discretionary disclosure of information on this newly promoted technology and its wastes and creates a strong preference in favor of release. Any information potentially subject to a FOIA Exemption should be withheld only if a case-specific determination is made by NRC program personnel and legal counsel that establishes an important purpose would be served by withholding the information.

Please expedite the processing of this request and the delivery of all responsive documents within ten (10) days. I hereby certify that the information supplied regarding expedited processing is true and correct to the best of my knowledge and belief and that review of the requested records constitutes a compelling need as set forth at 5 U.S.C. §552(a)(6)(v)(II). The ongoing demonstration projects described previously herein are of concern to TAC given the public statements of Black Range Minerals to relocate the ablation machinery to Colorado and to use that technology to mine uranium in the Tallahassee area of Fremont County, Colorado. Despite repeated requests, NRC and Colorado officials have not confirmed licensing or enforcement actions for the various ablation sites, so FOIA is the only means available for timely public scrutiny of these ongoing regulatory activities.

Without expedited processing, the requesters and other public interest groups will not be able to fully exercise the right to current information about government activities regarding the deployment of ablation technologies, which have the potential to contaminate local water wells and aquifers. Our understanding is that the experimental technology is being deployed without any licensing, reporting, monitoring, or other environmental protections. Impact ablation

produces a byproduct consisting of uranium oxide and radium decay products as well as heavy metals that were in the ore. The water used in the ablation process contains dissolved uranium and radium and the entire process presents a potential threat to the health and safety of residents in the Tallahassee area of Fremont County as well as their wells that provide drinking and irrigation water supplies. Once aquifers are contaminated by radionuclides and heavy metals, many of which are soluble in water (for example, radium), it can take decades and centuries of expensive treatment to decontaminate the groundwater. Without adequate regulation and monitoring in place, contaminated excursions and groundwater plumes could reach us via direct ingestion from our water wells. Additional pathways are the ingestion of contaminated plants and animals which drink and accumulate water contaminated by ablation. Without expedited processing, we would not have timely access to regulatory activities regarding ongoing and planned ablation experiments that pose a threat to our health and well-being.

POTENTIALLY EXEMPT MATERIALS

It is highly unlikely that the requested records are exempt from disclosure. However, if you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions from the nonexempt portions and provide copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it.

It is likely that Exemption 5 will apply to only a few records responsive to this request. However, if the agency does determine that portions of the requested information qualifies for Exemption 5, the agency should attempt to redact any non-factual portions of the information requested above. In so doing, please provide a detailed summary and explanation of its redactions, all persons involved in creating or obtaining the record, and identify the specific decision that was under consideration at the time the record was created

Please take the necessary steps to ensure that any asserted exemption has not already been waived by previous release to persons not covered by the exemption or by other action of the agency. Please note that waiver of an exemption is not limited to the specific records where the agency's acts or omissions failed to preserve or operated to waive the underlying privilege, but extends to eliminate the ability to claim privileges regarding all agency records concerning the same subject matter.

In short, expeditious release of all agency records created or obtained by NRC concerning the experimental uranium recovery technologies and related potential contamination in our neighborhood is clearly within the public interest and agency records may only be withheld after application of the specific legal provisions under FOIA to the specific contents and circumstances of records that may be subject to withholding. Policy and federal law encourages the release of agency records that serve a public purpose, even when an exemption may apply.

SEE WAIVER

Pursuant to 5 U.S.C. §552(a)(4)(A)(iii), TAC is requesting a fee waiver for the records it is requesting.

TAC is a non-profit organization and is incorporated in the State of Colorado. Our sole purpose is to educate ourselves, the local community and statewide conservation organizations. We are
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engaged in ongoing discussions with state and federal regulatory agencies including the Colorado Division of Mining and Safety, the Colorado Division of Water Resources, the Colorado Department of Public Health and Environment and the U.S. Environmental Protection Agency. TAC members have the experience and expertise to review the requested materials. The TAC Board of Directors is comprised of people with varied experience in areas including government and policy making, including some who have degrees in engineering and law. Members of the TAC leadership have engaged in a five-year self-education program on issues relating to the mining and milling of uranium and issues relating to the quality and quantity of water related to those activities. TAC members have attended meetings and conferences on these subjects throughout the United States and Canada, the funding for which was paid for entirely by the attendees. Additionally, TAC regularly consults with professional engineers and academic experts in the fields of water quality, hydrogeology, geochemistry, mineral process engineering and environmental engineering. TAC receives pro bono legal assistance from three lawyers, two of whom are specialists in the mining industry. Therefore TAC members have the experience and expertise to review the requested materials or they have access to the expertise necessary to review those materials.

TAC uses open records requests to obtain information about government agencies and makes information concerning uranium milling and mining available to its members and members of the public through electronic and printed publications, websites, public meetings, press releases, phone calls, administrative appeals, and litigation, among other means. *See e.g.:* www.taccolorado.com. TAC shares information with other grass roots organizations such as Citizens Against Resource Destruction (CARD), Inform Colorado, Sheep Mountain Alliance, Western Mining Action Network (WMAN), and the Powder River Basin conservation groups in Wyoming. They, in turn, share it with their respective communities. Locally TAC shares information with the Colorado Citizens Against Toxic Waste (CCAT), and four of TAC's Board members hold Board positions with CCAT. TAC plans to make the information obtained from this request available to its members and the general public and does not seek this information for commercial use. TAC has a direct, non-commercial interest in learning as much as possible, as early as possible, about regulatory considerations since the citizens it represents primarily live in an area that is of immediate interest to Black Range Minerals. TAC members have made speeches and power point presentations to many groups including the Denver Justice and Peace Center, and the WMAN Southwestern Confab on Mining.

The information requested concerns the operation and activities carried out by or on the behalf of the NRC, an agency of the federal government. FOIA provides that agency records shall be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a) (4) (A) (iii).

This fee waiver provision was adopted to facilitate access to agency records by what the Court described as citizen "watchdog" organizations. *See, Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987). For this reason, Congress intended that the provision be liberally construed in favor of waivers for noncommercial requesters. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Here, release of the requested records will primarily benefit the public and substantially contribute to public understanding of the government's policies and activities concerning management of radioactive wastes and the hazardous and radiological materials contained in such waste, public resources, operation of uranium disposal facilities, wetlands, wildlife habitat, endangered species protections, as well as policies concerning public recreation and

environmental protection. Additionally the information requested has a direct bearing on the public health and the safety of the only source of water for drinking and irrigation that is available to the residents of the Tallahassee area of Fremont County. Through public comment, preparation of action alerts, press releases, public meetings, and other means, TAC will make the information obtained from this request available to its members, supporters, and other groups.

Over the years, TAC's members have gained significant expertise in reviewing, summarizing, and communicating the contents of agency records involving groundwater contamination and uranium production at the Cotter Mill and Lincoln Park Superfund site, which is located in Fremont County. This expertise and knowledge has been applied to the problematic legacy of uranium mining and recurring proposals to mine the low-grade uranium deposits in the Tallahassee area. TAC members are recognized and sought-out by local, regional, and national organizations and government entities for their expertise in these matters. The TAC website provides some insight into these activities. In carrying out its FOIA duties, NRC must also recognize and honor TAC's First Amendment associational rights when seeking additional, identifying information on TAC membership. *See NAACP v. Alabama ex. Rel. Patterson*, 357 U.S. 449 (1958) (upholding constitutional right to free association and limiting government interference and inquiry into organizational membership). Where TAC members may not currently possess sufficient expertise, TAC associates with other non-profits with such expertise and may hire experts to help review, summarize, and communicate the highly technical or unusual contents of agency records.

TAC makes public service presentations on matters such as the information relating to the materials that have been requested. TAC shares all of that information free of charge. TAC does not use any of that information for any commercial purpose. TAC also provides the information to local and state regulatory authorities in the course of an ongoing dialog that it maintains with government and regulatory officials at all levels of government.

Release of the information will empower supporters of the groups and members of the public to engage in public advocacy efforts to protect and conserve the resources, environment, and human health near uranium processing facilities. These records are not sought for commercial use.

Moreover, given the nature of the records, TAC will be reviewing the information requested intensively and extensively, and sharing such records with other citizens, community members, experts, elected officials, and local governments. Release of the records described in this FOIA request will therefore primarily benefit the public and substantially contribute to its understanding of the government's policies and activities concerning activities at ablation projects generally and the handling of the waste at the ongoing facility in Casper, WY in particular.

Summaries of newsworthy portions of the records will be made available to local media, regional and national media outlets, and will be disseminated via meetings, email, and our internet website. No commercial gain will accrue to any groups individuals to whom such material will be distributed as a result of this request.

If, for some reason, you should deny this request for a fee waiver, you should classify the organizations as representatives of the news media, as that term is used in 5 USC § 552 (a)(4)(A)(ii)(II). TAC shares its information with other non-profit environmental grassroots organizations and together we inform those organizations, individuals, media outlets, and

about public land policies as they impact Colorado and the region. Information will be distributed through periodic bulletins, web sites, press events, slide shows and tabling at fairs and other public events. Therefore, groups are a representative of the news media. See, National Security Archives v. US Department of Defense, 880 F2d 1381, 1385 (D.C. Cir. 1989).

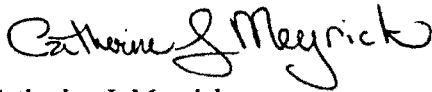
This request is submitted with the full expectation that such a waiver will be granted. However, if a decision is made to deny the fee waiver request, please immediately inform the undersigned of the cost of disclosing the above-described records if fees exceed \$50.00 and we can discuss appropriate next steps.

I look forward to your expedited response within ten (10) days. If a response is not received within ten (10) days, this request will be deemed denied.

If you have any comments or questions regarding this request, please do not hesitate to contact me at my email address, (b)(6) [redacted], or by telephone at (b)(6) [redacted]

Respectfully submitted on behalf of the TAC Board of Directors

Sincerely,



Catherine J. Meyrick
President
Tallahassee Area Community, Inc.