

**FOIA Resource**

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**From:** Chumley, Sharon <schumley@hunton.com> on behalf of Brown, Todd <tbrown@hunton.com>  
**Sent:** Monday, October 19, 2015 2:16 PM  
**To:** FOIA Resource  
**Cc:** Brown, Todd; Chumley, Sharon  
**Subject:** [External\_Sender] Appeal from Initial FOIA Decision (NRC Response No. 1, FOIA/PA 2015-0345)  
**Attachments:** E&P\_DOE - E&P\_s Appeal of NRC\_s September 23, 2105 FOIA Decision (Denial Based on Exemption 6)\_57790472\_3-c.PDF

NRC Freedom of Information Act and Privacy Act (FOIA/PA) Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T-5 F09  
Washington, DC 20555-0001

**Re: Appeal from Initial FOIA Decision (NRC Response No. 1, FOIA/PA 2015-0345)**

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552, on behalf of my client Energy & Process Corporation.

**A. Todd Brown, Esq.**  
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FOIA REQUEST  
Case No.: 2016-0001A  
Date Rec'd: 10/19/15  
Specialist:  
Related Cases:

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FILE NO: 34225.002056

October 19, 2015

**Via Email, Facsimile (301) 415-5130, and U.S. Mail**

NRC Freedom of Information Act and Privacy Act (FOIA/PA) Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T-5 F09  
Washington, DC 20555-0001

Re: Appeal from Initial FOIA Decision (NRC Response No. 1, FOIA/PA 2015-0345)

Dear FOIA/PA Officer:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552.

On June 22, 2015, on behalf of my client Energy & Process Corporation (“E&P”), I made a FOIA request to your agency to produce information and documents relating to reinforcing steel, also commonly referred to as rebar, fabricated and delivered during 2006–2008 to the Mixed Oxide Fuel Fabrication Facility (“MOX Facility”) at the Savannah River Site in Aiken, South Carolina. A copy of E&P’s FOIA Request is attached as Exhibit A for your convenience.

On September 23, 2015, Victor McCree, the Regional Administrator, RII, withheld production of certain unidentified documents in “Group B” of the NRC’s document production on the ground of Exemption 6 of FOIA. He invoked no other exemption as a basis for partially withholding records E&P requested. An agency subject to FOIA may withhold records, in full or in part, under Exemption 6 if the information is contained in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” 5 U.S.C. § 552(b)(6). The DOJ’s guidelines emphasize to federal agencies, however, that when engaging in the required Exemption 6 analysis, “it is important to remember that the Court of Appeals for the District of Columbia Circuit has declared that ‘under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in the Act.’” *See Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1227 (D.C. Cir. 2008); *see also Consumers’ Checkbook Ctr. for the Study of Servs. v. HHS*, 554 F.3d 1046, 1057 (D.C. Cir. 2009) (stating that FOIA’s “presumption favoring disclosure . . . is at its zenith under Exemption 6”); *Lawyers’ Comm. for Civil Rights of S.F. Bay Area v. Dep’t of the Treasury*, No. 07-2590, 2008 WL 4482855, at \*20 (N.D. Cal. Sept. 30, 2008) (“The burden remains on the agency to justify any withholdings under Exemption 6 since the presumption in favor of disclosure under this exemption is as strong as



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that with other exemptions.”). In determining whether to invoke Exemption 6, agencies subject to FOIA must balance “the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976) (internal quotation marks and citation omitted).

Exemption (b)(6) applies only to “personnel and medical files and similar files.” Mr. McCree failed to indicate either the category of documents the NRC has withheld or the volume of documents withheld. In addition, there is no stated correlation between the NRC documents withheld and any of the 50 categories set forth in Appendix A to E&P’s FOIA Request (*e.g.*, the NRC withheld documents requested in E&P’s request no. “x”). Such specificity would better enable E&P to assess the reasonableness of the withholding. A copy of the NRC’s response asserting Exemption 6 is attached as Exhibit B for your convenience.

The NRC may only assert a personal privacy interest for individuals, as legal entities such as corporations, businesses and partnerships have no privacy interest under Exemption 6. Moreover, even with respect to individuals, Exemption 6 only protects intimate details of personal and family life, not business judgments, decisions, and relationships. In light of the FOIA presumption favoring disclosure, a privacy interest is cognizable only if disclosure would work an invasion of personal privacy that is significant or substantial. *National Association of Retired Federal Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989). The threat to privacy must be tangible, not just a possibility. *Rose v. Department of the Air Force*, 495 F.2d 261 (2d Cir. 1974) (“Exemption 6 was directed at threats to privacy interests more palpable than mere possibilities.”), *aff’d*, 425 U.S. 352 (1976).

Here, any interest an individual involved in the business of designing and constructing the MOX Facility, and specifically the narrow area of installation of reinforcing steel, might have in the limited information in E&P’s requested records is modest, at best. E&P’s FOIA Request sought records relating to information and individuals while acting in their business capacities and with respect to their business judgments and decisions regarding the fabrication, delivery, and installation of reinforcing steel at the MOX Facility. A perusal of Exhibit A confirms that E&P did not request personnel or medical records. Nor did E&P request “similar files,” which means those containing information of a “personal quality and nature.” Rather, it is clear that E&P requested only business-related, non-personal information and records relating to the fabrication, delivery, and installation of reinforcing steel at the MOX Facility during the stated period. Information and records of business-related activities, judgments, decisions, etc. regarding the use of reinforcing steel at the MOX Facility are clearly releasable under FOIA.



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The information and records E&P has requested simply are not validly protected from disclosure by any of the Act's exemptions, including specifically Exemption 6. But even assuming the records withheld do contain any personal information about individuals involved with the fabrication and delivery of reinforcing steel to the MOX Facility, the public interest in the records would make it impossible for the NRC to show that disclosure of the records would constitute an unwarranted invasion of their personal privacy. "In making that balance, agencies and reviewing courts consider whether disclosure of the requested information would result in an invasion of privacy, and if so, the extent and seriousness of that invasion, as well as the extent to which disclosure would serve the public interest." *Gov't Accountability Project v. United States Dep't of State*, 699 F. Supp. 2d 97, 106 (2010) (quoting *United States Dep't of Def., Dep't of Military Affairs v. Fed. Labor Relation Auth.*, 964 F.2d 26, 29 (D.C. Cir. 1992)). The MOX Facility has been the focus of intense public scrutiny since its beginning. The records at issue relating to reinforcing steel are of the most public nature, in that they relate to investigations that the NRC, DOE-IG, DOJ, Shaw Areva, and other federal agencies conducted as a result of E&P's alleged delivery of hundreds of tons of nonconforming reinforcing steel to the MOX Facility during the stated period. The investigations conducted by these federal agencies and others, as well as the results of such investigations, were made publicly known, publicly disclosed in many forums, and publicly distributed to numerous entities and individuals; and records of such investigations were made publicly available by being placed in public ADAMS (which the NRC acknowledged in Part 1 of its September 23 response). Moreover, the MOX Facility remains the focus of intense public scrutiny for alleged mismanagement, severe cost overruns, viability, etc., including significantly a recent recommendation by the Obama Administration that the MOX Facility be placed in "cold stand-by." To be sure, the public interests in favor of disclosure of information and records requested by E&P relating to construction of the MOX facility far outweigh any private interests in nondisclosure.

Lastly, we would request the disclosure to E&P of any and all requested information and records that the NRC withheld but that are segregable. Even if one item of information in the requested MOX Facility records were exempt from disclosure, any reasonably segregable, non-exempt portion of the records would remain subject to disclosure. "An item of exempt information does not insulate from disclosure the entire file in which it is contained, or even the entire page on which it appears." *Arieff v. United States Department of Navy*, 712 F.2d 1462, 1466 (D.C. Cir. 1983). Rather, "[a]ny reasonably segregable portion of a record shall be provided ... after deletion of the portions which are exempt." 5 U.S.C. § 552(b).

I trust that upon re-consideration, you will reverse Mr. McCree's decision denying E&P access to withheld materials in Group B and grant E&P's original request without the NRC's assertion of any exemptions. E&P expressly preserves any and all available legal rights and remedies available to it. As we requested the responsive records in June 2015, I would appreciate your



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expediting the consideration of this appeal in every way possible. In any case, I will expect to receive your decision within 30 working days.

Thank you for your assistance. Please feel free to contact me if necessary.

Very truly yours,

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

A. Todd Brown, Sr.

Attachments

# **EXHIBIT A**



HUNTON & WILLIAMS LLP  
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**A. TODD BROWN, SR.**  
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June 22, 2015

FILE NO: 34225.002056

**Via Facsimile (301) 415-5130**

NRC Freedom of Information Act and Privacy ACT (FOIA/PA) Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T-5 F09  
Washington, DC 20555-0001

Re: Freedom of Information Act Request for Documents Related to Reinforcing Steel/Rebar  
That Energy & Process Corporation Supplied to the Mixed Oxide Fuel Fabrication  
Facility at the Savannah River Site in Aiken, South Carolina

Dear FOIA/PA Officer:

This is a request for documents filed under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq. (hereinafter “the Request”). Hunton & Williams LLP requests that the U.S. Nuclear Regulatory Commission produce any and all information and documents relating to reinforcing steel, also commonly referred to as rebar, that Energy & Process Corporation fabricated and delivered during 2006–2008 to the Mixed Oxide Fuel Fabrication Facility (“MOX Facility”) at the Savannah River Site in Aiken, South Carolina. The categories of documents the Request seeks are described in Appendix A attached hereto. As used in the Request, the phrase “Shaw Areva MOX Services, LLC” (“Shaw Areva”) is intended to include its predecessor known as “Duke Cogema Stone & Webster.” As stated in Appendix A, we also request the identities of any persons or entities who have made FOIA requests since January 1, 2008, relating to labor and work performed, or products and materials supplied, by E&P for the MOX Facility. The Request includes all documents and records discussing or describing the purpose of and timing of any inspections, as well as any instructions to, or communications with, the inspectors involved and their supervisors.

Hunton & Williams LLP is prepared to pay the reasonable and necessary fees for searching for, reviewing, and duplicating the records and documents related to the Request, in accordance with applicable regulations. Please contact me to discuss the approximate costs associated with responding to this FOIA request if the fees will exceed \$1,500.00, and to determine the most efficient manner to forward copies of any and all responsive documents to my attention. We would further ask that you send any responsive documents on a rolling basis rather than waiting until the entire search is completed. If you deny all or any part of the Request, please cite each



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specific FOIA exemption that justifies your denial of the information and notify me of appeal procedures available under the law.

Thank you in advance for your assistance. If you have any questions about the Request or require further information, please do not hesitate to contact me at 704-378-4727 or [tbrown@hunton.com](mailto:tbrown@hunton.com).

Very truly yours

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

A. Todd Brown, Sr.

Attachment



## Appendix A

1. All documents relating to Audit Report EAP-06-VE10 performed by Duke Cogema Stone & Webster as to Energy & Process Corporation's ("E&P") Supply of Materials Including Embedded Pipe, Rebar, and Rebar Fabrication for The Mixed Oxide Fuel Fabrication Facility ("MOX Facility") at the Savannah River Site in Aiken, SC;
2. All documents relating to any audits performed by, or any written reports issued by, any federal agency relating to E&P's rebar and its labor and work performed for the MOX Facility;
3. All documents relating to "Condition Report No: 20080139" which was issued by Shaw Areva MOX Services, LLC (including its predecessor Duke Cogema Stone & Webster) ("Shaw Areva ") in connection with a Nuclear Regulatory Commission ("NRC") inspection team's review and verification of audits performed by Shaw Areva to insure such audits were performed in a manner consistent with the requirements specified in MPQAP for the MOX Facility. See Section 3(b). "Observations and Findings," of NRC Letter to Shaw/Areva MOX Services, dated May 13, 2008;
4. All documents relating to Prime Contract No.: DE•AC56-99CH10S88 entered into between the U.S. Department of Energy ("DOE") and Shaw Areva as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
5. All documents relating to Prime Contract No.: DE•AC56-99CH10S88 entered into between the DOE and Shaw Areva as such documents relate to rebar and labor and work performed, or products and materials supplied, by any successor person or entity that replaced E&P and started providing rebar, labor, work, products, materials, etc. to the MOX Facility after Shaw Areva terminated its contractual relations with E&P in 2008;
6. All documents relating to Prime Contract No.: DE•AC56-99CH10S88 entered into between the DOE and Shaw Areva as such documents relate to the price the DOE and/or Shaw Areva paid to any successor person or entity to E&P, in exchange for such person or entity providing rebar, labor, work, products, materials, etc. to the MOX Facility after Shaw Areva terminated its contractual relations with E&P in 2008;
7. All documents relating to Subcontract/Agreement No. 10888-S1383 (Release 1 Rebar) and all amendments thereto entered into between Shaw Areva and E&P relating to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
8. All documents relating to Subcontract/Agreement No. 10888- S1526 (Release 2 Rebar) and all amendments thereto entered into between Shaw Areva and E&P relating to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;

9. All documents relating to the U.S. Department of Energy Office of Inspector General, Office of Audit Services' Audit Report entitled, "The Procurement of Safety Class/Safety-Significant Items at the Savannah River Site," dated April 2009, as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
10. All documents relating to the U.S. Department of Energy Office of Inspector General, Office of Audits and Inspections' Audit Report entitled, "Cost and Schedule of the Mixed Oxide Fuel Fabrication Facility at the Savannah River Site," dated May 2009, as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
11. All documents relating to the U.S. Department of Energy Office of Independent Oversight, Office of Health, Safety and Security Office's report entitled, "Independent Oversight Inspection of Reinforced Concrete Construction at the Savannah River Site Mixed Oxide Fuel Fabrication Facility," dated December 2009, as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
12. All documents relating to the "Construction Authorization Request," as revised, submitted by Shaw Areva, dated October 30, 2002, and supplements thereto, as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
13. All documents relating to the "MOX Project Quality Assurance Plan," dated March 26, 2002 and supplements thereto, as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
14. All documents relating to the "MOX Environmental Report," dated December 19, 2000, and supplements thereto, as such documents relate to rebar and labor and work performed, or products and materials supplied, by E&P for the MOX Facility;
15. All documents relating to the NRC's "Reactive Vendor Inspection" and investigation of E&P in 2008 in relation to E&P's alleged supply of a large quantity of nonconforming reinforcing steel to the MOX facility, or for any other reason that the NRC conducted its inspection of E&P, including all documents relating to "NRC Team Inspection Report 99900866/2008-001" prepared by the NRC Team and all documents the NRC Team received from or provide to the Office of New Reactors ("NRO"), the Office of Nuclear Materials Safety and Safeguards ("NMSS"), and Region II;
16. All documents relating to the identification of, or identifying, the persons, employees, representatives, agents, etc. of Shaw Areva, the DOE, the NRC, and/or any other federal agencies (including NRO, NMSS, and Region II mentioned above) who had knowledge of, participated in, or was consulted about the Reactive Vendor Inspection of E&P

mentioned in Request No. 15 above, including NRC Team Inspection Report 99900866/2008-00;

17. All documents relating to inspections of Shaw Areva performed by the U.S. Department of Energy (“DOE”) or its employees, representatives, agents, etc. to verify that Shaw Areva was overseeing and verifying the processes of fabrication, delivery, and installation of rebar at the MOX facility, in accordance with the MOX Project Quality Assurance Plan, dated March 26, 2002 and supplements thereto, including all applicable nuclear industry requirements and regulations;
18. All documents relating to inspections of Shaw Areva performed by the U.S. Department of Energy Office of Inspector General (“DOE-OIG”) or its employees, representatives, agents, etc. to verify that Shaw Areva was overseeing and verifying the processes of fabrication, delivery, and installation of rebar at the MOX facility, in accordance with the MOX Project Quality Assurance Plan, dated March 26, 2002 and supplements thereto, including all applicable nuclear industry requirements and regulations;
19. All documents relating to inspections of Shaw Areva performed by the U.S. Nuclear Regulatory Commission (“NRC”) or its employees, representatives, agents, etc. to verify that Shaw Areva was overseeing and verifying the processes of fabrication, delivery, and installation of rebar at the MOX facility, in accordance with the MOX Project Quality Assurance Plan, dated March 26, 2002 and supplements thereto, including all applicable nuclear industry requirements and regulations;
20. All documents relating to requests for payment made by E&P relating to rebar, labor, work performed, or products and materials that E&P supplied for the MOX Facility;
21. All documents relating to requests for payment made by Shaw Areva relating to rebar, labor, work performed, or products and materials supplied by E&P for the MOX Facility;
22. All documents relating to requests for payment submitted by Shaw Areva to the DOE (or any other person or entity) for rebar, labor, work performed, or products and materials supplied by E&P for the MOX Facility;
23. All documents relating to invoices submitted by Shaw Areva to the DOE (or any other person or entity) for rebar, labor, work performed, or products and materials supplied by E&P for the MOX Facility;
24. All documents relating to certificates of compliance, certificates of conformance, or any other certifications with applicable contract documents that Shaw Areva submitted to the DOE (or any other person or entity) for rebar, labor, work performed, or products and materials supplied by E&P for the MOX Facility;

25. All documents relating to notices, testing, analyses, engineering evaluations, surveillances, and inspections conducted by Shaw Areva, DOE, NRC, or any other person or entity relating to Shaw Areva's notice to the NRC, via letter dated April 4, 2008 (re: Docket Number 070-03098), wherein Shaw Areva informed the NRC Operations Center that Shaw Areva had allegedly "identified a deviation associated with reinforcing rebar supplied by" E&P;
26. All documents relating to all testing, analyses, engineering evaluations, surveillances, inspections, etc. performed by Shaw Areva (or by any other person or entity) relating to Shaw Areva's statements in its letter to the NRC dated April 4, 2008, to the effect that "[t]he condition involves reinforcing bars (rebar) supplied by E&P that have a bend radius below the minimum specified by ACI Standard 315-99 and ACI Standard 349-97" and that "[t]he condition was initially observed on 06 February 2008";
27. All documents relating to or confirming the number of pieces of rebar and/or the tonnage of rebar that E&P supplied to Shaw Areva which allegedly did not comply with applicable contracts specifications for the MOX Facility because the rebar that E&P delivered had a bend radius below the minimum specified by ACI Standard 315-99 and ACI Standard 349-97;
28. All documents relating to Shaw Areva's (or any other person's or entity's) testing, analyses, engineering evaluations, surveillances, inspections, etc. to determine whether the allegedly noncompliant rebar that E&P had delivered and that had been embedded in concrete at the MOX Facility could nonetheless remain installed in the MOX Facility because, after such testing and analyses, Shaw Areva had "determined that the IROFS function of the BMF structure was not diminished by the rebar installed in concrete poured to date and that a substantial safety hazard would not result in the MFFF if the deviation had not been discovered," as stated in Shaw Areva's letter to the NRC dated April 4, 2008;
29. All documents relating to or confirming the number of pieces of rebar and/or the tonnage of the allegedly noncompliant rebar that E&P supplied to Shaw Areva but which Shaw Areva rejected and returned to E&P for replacement (before it was installed into concrete at the MOX Facility), because Shaw Areva determined that it did not comply with applicable contract specifications in that it had a "bend radius below the minimum specified by ACI Standard 315-99 and ACI Standard 349-97";
30. All documents relating to testing, analyses, engineering evaluations, surveillances, inspections, etc. conducted by Shaw Areva for rebar supplied by E&P for the MOX Facility;
31. All documents relating to testing, analyses, engineering evaluations, surveillances, inspections, etc. conducted by any person or entity (other than Shaw) Areva for rebar, labor, or work performed by E&P for the MOX Facility;

32. All documents relating to the identification of, or identifying, the Shaw Areva employees, representatives, agents, etc. who performed any work at the CMC Rebar Carolinas ("CMC") rebar fabricating facility in Columbia, South Carolina, or who visited the premises of CMC during the time E&P provided rebar, or who observed or inspected CMC's rebar fabrication and delivery processes for rebar CMC and/or E&P shipped to the MOX Facility;
33. All documents relating to the identification of, or identifying, the DOE employees, representatives, agents, etc. who performed any worked at the CMC rebar fabricating facility in Columbia, South Carolina, or who visited the premises of CMC during the time E&P provided rebar, or who observed or inspected CMC's rebar fabrication and delivery processes for rebar CMC and/or E&P shipped to the MOX Facility;
34. All documents relating to the identity of and/or identifying the NRC employees, representatives, agents, etc. who performed any worked at the CMC rebar fabricating facility in Columbia, South Carolina, or who visited the premises of CMC during the time E&P provided rebar, or who observed or inspected CMC's rebar fabrication and delivery processes for rebar CMC and/or E&P shipped to the MOX Facility;
35. All documents relating to Shaw Areva's "receipt inspections" procedures that Shaw Areva or its employees, representatives, agents, independent contractors, etc. performed on any rebar that Shaw Areva received from E&P or CMC at the MOX Facility;
36. All documents relating to the "CP20 Subcontractor," or any other person or entity, that Shaw Areva used or employed for the purpose of performing "receipt inspections" on rebar that Shaw Areva received from E&P and CMC at the MOX Facility;
37. All documents relating to Shaw Areva's acceptance of rebar that Shaw Areva received from E&P and CMC at the MOX Facility;
38. All documents relating to Nonconformances or Nonconformance Reports, issued pursuant to 10 C.F.R. Part 21, 10 C.F.R. Part 50 Appendix B, or otherwise, that Shaw Areva prepared and/or issued to E&P for the time period during which E&P and CMC were fabricating and shipping rebar to the MOX Facility;
39. All documents relating to Surveillances or Surveillance Reports, issued pursuant to 10 C.F.R. Part 21, 10 C.F.R. Part 50 Appendix B, or otherwise, that Shaw Areva prepared and/or issued to E&P for the time period during which E&P and CMC were fabricating and shipping rebar to the MOX Facility;
40. All documents identifying persons, legal entities, and/or governmental agencies that have made FOIA requests, or otherwise submitted requests information or documents, relating to rebar generally or specifically regarding the MOX Facility, or relating to E&P's supply of rebar and its labor and work performed for the MOX Facility;

41. All documents relating to any costs or expenses, including related calculations, that Shaw Areva, the DOE, the NRC, CMC, and/or any other person or entity allegedly incurred as a result of E&P's alleged failure to supply rebar to the MOX facility in compliance with applicable contract specifications and/or nuclear requirements and regulations;
42. All documents relating to any costs or expenses, including related calculations, that Shaw Areva, the DOE, the NRC, CMC, and/or any other person or entity allegedly incurred as a result of E&P's alleged supply of rebar to the MOX facility that had a bend radius or bend diameter below the minimum specified by ACI Standard 315-99 and ACI Standard 349-97;
43. All documents relating to or constituting written notes or minutes of meetings held and attended by employees, representatives, agents, independent contractors, etc. of E&P, CMC, Shaw Areva, DOE, NRC, and/or other third parties as such written notes or minutes relate to E&P's and CMC's fabrication, delivery, and sale of rebar to Shaw Areva for use at the MOX Facility;
44. All documents relating to communications between Shaw Areva and Nova Machine Products;
45. All documents relating to communications between Shaw Areva and Tim Walker;
46. All documents relating to communications between Shaw Areva and Consolidated Power Supply;
47. All documents relating to communications between Shaw Areva and Gerdau Ameristeel;
48. All documents authored or received by George Shell relating to rebar usage, measurement, receipt, installation, and/or removal at the MOX Facility;
49. All documents relating to investigations, discussions, communications, etc. by Shaw Areva, the DOE, the NRC, and/or any other person or entity regarding the extent to which DOE construction sites took steps before February 6, 2008, to measure the bend radius or bend diameter of rebar prior to installing it in concrete at DOE facilities, to determine if such rebar had "a bend radius below the minimum specified by ACE Standard 315-99 and ACI Standard 349-97." See Shaw Areva's Final Report to NRC Document Control Desk as required by 10 C.F.R. Part 21.21(d)(4), via letter dated April 29, 2008; and
50. All documents relating to Shaw Areva's design changes for the MOX Facility with respect to rebar and how such design changes impacted Shaw Areva's construction schedules and Shaw Areva's usage of the rebar that E&P supplied.

# **EXHIBIT B**

<b>REQUESTER</b> Todd Brown	<b>DATE</b> <b>SEP 23 2015</b>
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**PART I. -- INFORMATION RELEASED**

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- |            |
|------------|
| GROUP<br>A |
|------------|

 Agency records subject to the request that are identified in the specified group are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- |       |
|-------|
| GROUP |
|-------|

 Agency records subject to the request that are contained in the specified group are being made available in public ADAMS.
- |              |
|--------------|
| GROUP<br>B,C |
|--------------|

 Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

**PART I.A -- FEES**

AMOUNT\*     You will be billed by NRC for the amount listed.     None. Minimum fee threshold not met.

\$ 

157.00
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 You will receive a refund for the amount listed.     Fees waived.

\* See comments for details

**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- We did not locate any agency records responsive to your request. *Note:* Congress allowed agencies to treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification that we give to all requesters: it should not be taken as an indication that any of these excluded records do, or do not, exist.
- We have withheld certain information in the records from disclosure pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal this determination at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination on your request.
- You may appeal this final determination within 30 calendar days of the date of this response, by writing to the FOIA Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Please be sure to mark your letter/envelope or email that it is a "FOIA Appeal."

**PART I.C COMMENTS ( Use attached Comments continuation page if required)**

Subsequent to our receipt of your request, we received authorization from Energy & Process to release any of its records, which we determined to be responsive to your request, to you. Because you opted to receive our response, including any responsive records, electronically, we will be issuing you a refund of the duplication fees that were included in the fee estimate that you paid in advance. Please note that there are several pages, which had been submitted to the NRC, that include graphics and handwritten annotations. Some of the handwriting may be difficult to read; these are the best copies we have available.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

*Roger D. Andoh*





**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

DATE

**SEP 23 2015**

**PART II.A -- APPLICABLE EXEMPTIONS**

GROUP  
B

Records subject to the request that are contained in the specified group are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C., Section 4702(b), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
  - Disclosure will harm an identifiable private or governmental interest.
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrong doing or a violation of NRC requirements from investigators).
  - (C) Disclosure could constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Victor McCree	Regional Administrator, RII	Group B	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."