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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
August 17, 1979

Mr. John J. Fialka
The Washington Star
225 Virginia Avenue, S.E.
Washington, DC 20061

IN RESPONSE REFER
TO FOIA-78-334

Dear Mr. Fialka:

This is in response to your letter dated November 30, 1978, in which you requested, pursuant to the Freedom of Information Act (FOIA), access to all documents pertaining to the Nuclear Materials and Equipment Corporation, and NRC's investigation into the remarks of the Executive Director for Operations that had been denied in whole or in part in response to previous FOIA requests.

Appendix A to this letter is a list of documents subject to your request.

As a result of the requested declassification review, additional portions of documents 7 and 12 of Appendix A have been declassified and are enclosed. These portions will also be integrated into the appropriate FOIA folder currently in the Public Document Room (PDR) located at 1717 H Street, N.W., Washington, DC. Acting on an appeal from Mr. A. Kranish, additional portions of documents 13 and 15 were released to him. These additional portions are also enclosed.

The withheld portions of document 7 and the previously withheld portions of documents 2, 4, 6, 18 and 21 of Appendix A continue to contain Restricted Data and National Security Information. The statutory authority for withholding Restricted Data is found in Sections 141 through 145 of the Atomic Energy Act of 1954 as amended (42 U.S.C. 2161-2165), which controls access to Restricted Data and prohibits its unauthorized disclosure. Similarly, Executive Order 12065 prohibits unauthorized disclosure of National Security Information. The withheld portions of these documents are exempt from disclosure pursuant to exemptions (1) and (3) of the Freedom of Information Act (5 U.S.C. 552(b)(1) and (3)) and 10 CFR 9.5(a)(1) and (3) of the Commission's regulations.

The previously withheld portions of documents 5, 9, 10 and 11 continue to be classified pursuant to Executive Order 12065 and are being withheld

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from public disclosure pursuant to exemption (1) of the Freedom of Information Act (5 U.S.C. 552(b)(1)) and 10 CFR 9.5(a)(1) of the Commission's regulations.

Portions of document 21 contain information which identifies procedures for safeguarding licensed special nuclear material. Such information is considered commercial or financial (proprietary) information pursuant to 10 CFR 2.790(d) of the Commission's regulations and is being withheld from public disclosure pursuant to exemption (4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and 10 CFR 9.5(a)(4) of the Commission's regulations.

The withheld portions of document 13 and the previously withheld portions of documents 14, 16 and 17 of Appendix A contain advice, opinions and recommendations of the staff and continue to be withheld from public disclosure pursuant to exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations.

The portions of documents 1, 2, 4, 5, 6, 7, 10 and 19 of Appendix A which were classified by the Department of Energy have been forwarded to that agency for review. The portions of document 7 of Appendix A which were classified by the National Security Council have been forwarded to that agency for review. The portions of document 9 of Appendix A which were classified by the Defense Intelligence Agency have been forwarded to that agency for review. If NRC is advised that additional material can be released, we will inform you.

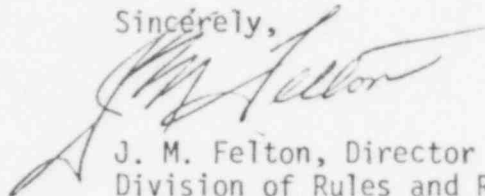
The NRC review of documents 1, 3, 19 and 20 of Appendix A has not been completed. As soon as these reviews are completed, you will be notified of our disclosure determination.

Pursuant to 10 CFR 9.9 and 9.15 of the Commission's 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 persons responsible for the denial of the withheld information in documents 2, 4 through 7, 9 through 11, 18 and 21 of Appendix A are the undersigned and Mr. Raymond J. Brady, Director, Division of Security; and with respect to certain withheld portions of volume 1 of document 2 of Appendix A, Mr. John A. Griffin, Director, Office of Classification, Department of Energy; and with respect to certain withheld portions of document 21 of Appendix A, Mr. Victor Stello, Director, Office of Inspection and Enforcement. The person responsible for the denial of the withheld information in document 13 of Appendix A is Mr. Albert P. Kenneke, Acting Director, Office of Policy Evaluation. The person responsible for the denial of the withheld information in documents 14, 16 and 17 of Appendix A is Mr. James J. Cummings, Director, Office of Inspector and Auditor.

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The denials by Messrs. Brady, Griffin, Stello and myself may be appealed to the Executive Director for Operations within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision." The denials by Messrs. Cummings and Kenneke may be appealed within 30 days to the Commission and should be addressed to the Secretary of the Commission.

Sincerely,



J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

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APPENDIX A

1. Memorandum, James H. Conran to Thomas J. McTiernan, "Supplemental Information Requested by OIA in Connection with the Investigation of Alleged Irregularities in the Conduct of the NRC Safeguards Program," March 10, 1977.
2. Report of the Overview Study of Existing Safeguards Regulations, James H. Conran, Draft 2, Volumes I, II, III, April 29, 1976.
3. Memorandum, Thomas J. McTiernan to Chairman Rowden, "Interviews with James H. Conran," June 15, 1976, encloses a memorandum and 25 attachments, from James H. Conran to Thomas J. McTiernan, entitled "Free Flow of Information and Expression of Dissenting Views," May 27, 1976.
4. Transcript of Proceedings, April 13, 1977, meeting of James H. Conran with Task Force, pages 1 to 176.
5. Memorandum to Task Force, April 18, 1977, from B. J. Snyder, "Review of 4/13/77 Meeting Transcript."
6. Transcript of Proceedings, April 13, 1977, meeting of James H. Conran with Task Force, pages 177-212.
7. Transcript of Proceedings April 18, 1977, meeting of R. G. Page of NMSS with Task Force, pages 321-418.
8. February 9, 1978 memo to T. J. McTiernan from R. Brady.
9. April 20, 1977 Note to Task Force from W. Reamer, "B. Rich Interview with attachment".
10. February 23, 1978 memorandum to J. Hendrie from R. Brady re: Classification.
11. February 9, 1978 note to Ray Brady from T. J. McTiernan.
12. June 13, 1977 memo to K. Pedersen from D. Ong.
13. February 9, 1978 note to Tom Carter from Thomas J. McTiernan attachment: draft write-up.
14. February 8, 1978 memorandum for Chairman Hendrie et. al., from Thomas J. McTiernan attachment: Draft Summary of Records for Possible Inclusion in Report.
15. January 23, 1978 note to file from Thomas J. McTiernan.

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16. Draft Interview Summaries.
17. Case History and Comments - B & W Apollo - SNM-145 Docket 70-135.
18. Handwritten and typewritten entries of threats, alleged theft, etc. incident from 1957 to 1975, compiled by James H. Conran.
19. Inquiry into the testimony of the Executive Director for Operations, February 1978, Volume III.
20. NRC Task Force Report, April 25, 1977, three sections.

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225 Virginia Avenue, S.E.

Washington, D.C. 20061

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FREEDOM OF INFORMATION ACT REQUEST

FOIA-78-334

rec'd 12-4-78

Joseph M. Felton
Freedom of Information Officer
Nuclear Regulatory Commission
Washington, D.C., 20555

Dear Sir:

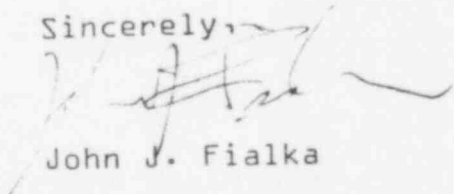
re: Felton
This is a request under the Freedom of Information Act for access to all documents pertaining to the Nuclear Materials and Equipment Corp. and your agency's investigation into the remarks of the Executive Director for Operations that have been edited or withheld in their entirety from previous FOIA requests.

It is my understanding that this request will have to be processed under Executive Order 12065, which goes into effect tomorrow and which will substantially alter the justifications available to an agency for withholding documents on national security grounds.

Section 1-b01, for example, states: "Classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition."

Because of the continuing public interest surrounding the question of nuclear safeguards and the NUMEC investigations, I request that all fees be waived.

Sincerely,


John J. Fialka

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