3164 Main Street Buffalo, New York 14214 (716) 832-9100

APPEAL OF INITIAL FOIA DECISION

80-A-14 E (80-137)

April 28, 1980

rec'd 5-1-80

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Appeal from an Initial FOIA Decision
FOIA-80-137
80-A-12

Dear Sir/Madam:

By letter dated March 13, 1980, received by the NRC March 17, 1980 and by appeal letter dated April 11, 1980, we requested copies of the following:

a. letter application dated August 27, 1979 from NL Industries, 1130 Central Ave., Albany, NY to W. Dircks, Director, NMSS, US NRC, Docket No. 110-595, including the proposed routing in the U.S. of the proposed Canadian spent fuel shipments,

b. resubmittal letter dated Sept.27, 1979 by George L. Stukenbroeker, Manager, Nuclear Transportation, NL Industries, including enclosure with route,

c. Letter by George McCorkle, Chief, Physical Security Licensing Branch, Division of Safeguards, NMSS, US NRC, to GL Stukenbroeker, NL Industries, dated Dec. 5, 1979, including strip map, and any more recent information concerning the route and Curie content of the proposed spent fuel shipments, and the date and time of day, when this information becomes available to the NRC.

In response, on April 15, you partially denied our request by excluding the most essential part, the route of the proposed Canadian spent fuel shipment, while providing us other portions of the application and correspondence not even requested. We appeal this partial denial of information. We specifically wish to obtain the route information of the proposed shipments.

Citizens of New York State and members of the Sierra Club have requested this routing information for the proposed spent fuel shipments from Chalk River, Ontario, because each community needs to know whether it is on the transportation route, and exactly when the shipments will arrive in order to be properly prepared in case of an accident. Local volunteer fire departments, ambulance crews and others need to be pre-notified. By not providing this important information, the public health and safety is being compromised on spurious commercial and proprietary interest grounds.

As stated in your letter of April 15, the NRC has denied this information pursuant to Exemption (4) of the Freedom of Information Act (5 USC 552 (b)(4)). However,, as we pointed out in our original request dated March 13, exemption (4) cannot be employed since the withheld information is neither a trade secret nor commercial or financial information.. The financial or commercial interests of NL Industries would not be compromised in the least by publishing the route plans. The information is also not a trade secret as with a new process or invention. It cannot be stated that divulging the information

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provides NL Industries' competitors with an advantage. We are certain that your denial has no basis in law and we appeal it.

Our letter dated April 11, received by you April 15, appealed your denial of our request. Your letter of April 15 was not responsive to our March 13 request and our appeal request dated April 11. According to the FOIA law, you have 20 working days, or until May 13, to respond to our appeal of April 11 (received by you April 15). If you do not act upon our appeal within 20 working days, we will deem our request denied.

As we were informed in the telephone conversation with Ms. Carol Ann Reed of your staff on April 17, the part of our April 11 letter which requested additional information will be handled as a separate initial request. If you do not act upon this initial request within 10 working days, or by April 29, we will deem this request denied. We thank you for your prompt, positive response to both of these matters.

We must say that we are disturbed by your disregard of the law, the Freedom of Information Act. Our initial request dated March 13, was received by the NRC March 17. You did not respond until April 15, 22 working days after receipt.* Since we had not received a response by April 11, we appealed and only then did you respond to our original request.

Very truly yours,

Dr. Marvin Resnikoff
Sierra Club Radioactive Waste Campaign
Box 64, Station G
Buffalo, N.Y. 14213
716/832-9100

cc: Kasun, Burnett, Dircks, Pohl, Millar, SCLDF, Blauner, Diehl, Galac, Lippes, Miksic, Sage, Chm. Ahearne

*The FOIA allows you 10 working days, as you are aware.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 15 1980

Ms. Mina Hamilton,
Mr. Marvin Resnikoff, co-directors
Sierra Club Radioactive Waste Campaign
Box 64, Station G
Buffalo, NY 14213

IN RESPONSE REFER
TO FOIA--80-137

Dear Ms. Hamilton and Mr. Resnikoff:

This is in reply to your letter dated March 13, 1980, in which you requested, pursuant to the Freedom of Information Act, copies of documents from NL Industries to the NRC dated August 27, 1979, and September 27, 1979; a letter dated December 5, 1979, including a strip map, from G. McCorkle, NRC to G. L. Stukenbroeker, NL Industries; and any more recent information concerning the route and curie content of the proposed Canadian spent fuel shipments, and the date and time of day when this information becomes available to the NRC.

In response to your request, we have identified the documents listed in Appendix A and Appendix B as being subject to your request. Copies of the documents listed in Appendix A are released in their entirety and are enclosed (total 13 pages). Copies of the released portions of the documents listed in Appendix B are also enclosed (total 12 pages). The information contained in the deleted portions of the documents identified in Appendix B identifies the scheduling, surface transportation routes, and other information for safeguarding the licensed special nuclear material contained in the irradiated reactor fuel being transported. This information is considered commercial or financial (proprietary) information pursuant to 10 CFR 2.790(d) (copy enclosed) 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) (copy enclosed) of the Commission's regulations.

Pursuant to 10 CFR 9.9 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 this [illegible] and Mr. John G. Davis, Deputy Director [illegible] Safety and Safeguards.

DUPLICATE DOCUMENT

Entire document previously entered into system under:

ANO 8005190083

No. of pages: 4