

APPEAL OF INITIAL FOIA DECISION

80-A-20(80-136)

rec'd 6-18-80

June 18, 1980



DR DONALD F. KNUTH
President

Mr. William J. Dircks
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Appeal from Initial FOIA Decision
FOIA-80-136

Dear Mr. Dircks:

On March 12, 1980, KMC, Inc. filed a request pursuant to the Freedom of Information Act to obtain information on environmental qualification tests of equipment as compiled under Federal contract with various contractors. The request was denied on June 12, 1980. KMC, Inc. hereby appeals the denial of that request.

KMC learned of the existence of these environmental qualification lists during meetings with the NRC and discussed the desirability of obtaining such information with NRC staff members in a meeting on February 21, 1980. The referenced meeting was attended by numerous NRC staff members and industry representatives. On at least three occasions after filing our FOIA request, we received telephone calls from NRC staff representatives concerning our request. While they indicated there were proprietary problems in releasing the data to KMC (a problem acknowledged in our March 12, 1980 letter, and which provided a recommended acceptable course of NRC action) and that there would be delays in responding to our request, they never denied that they knew precisely what information was being requested or once suggested that the request would be denied outright. On June 12, 1980 (over 90 days after our request) we finally received a letter which effectively denied our informational request.

There can be no doubt that the NRC staff was fully aware that the "list of equipment that has been environmentally tested," which is in the possession of the NRC, is what was being requested. Accordingly, we hereby appeal the initial determination that the Commission make available the environmental qualification data that it has in its possession. The staff's crabbed interpretation makes a mockery of the Freedom of Information Act. Moreover,

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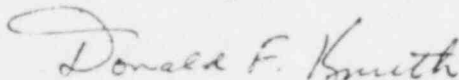
Mr. William J. Dircks
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inasmuch as you failed to abide by the procedural requirement of your regulation (see, particularly 10 CFR §9.9(d)) and considering the conversations with your staff members which pinpointed the exact nature of our request, we submit that the NRC illegally denied our request.

Your letter of June 12, 1980 also referenced an enclosure which was attached for our information (an annotated copy of the Petition for Emergency and Remedial Action). While we appreciate receiving another copy of that document (suitably marked and underscored), we were in attendance at the referenced Commission meeting and already had a copy for our records. Moreover, we do not understand the relevance of that enclosure as an answer to our March 12, 1980 FOIA request.

We appreciate your review of our appeal, and expect that in view of the required 90 day period (10 CFR 9.9 requires an answer within 10 days) to respond to our initial request we may hear from you within the 20 day appeal time frame as required by 10 CFR 9.11.

Sincerely,


Donald F. Knuth



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

June 12, 1980

Dr. Donald F. Knuth
KMC, Inc.
1747 Pennsylvania Avenue, N.W.
Washington, DC 20006

IN RESPONSE REFER
TO FOIA-80-136

Dear Dr. Knuth:

This is in response to your letter dated March 12, 1980 in which you requested, pursuant to the Freedom of Information Act, a list of equipment that has been environmentally qualified by various environmental testing laboratories.

We have been advised by our Office of Nuclear Reactor Regulation that while the NRC does maintain a list of equipment that has been environmentally tested, there is no existing list of equipment that has been environmentally qualified. Therefore, there are no documents in our possession subject to your request.

For your information, a copy of a note from Dick Vollmer to Vince Noonan, et al., forwarding a Commission Memorandum and Order addressing environmental qualification of equipment is enclosed.

Thank you for your patience in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. N. Felton".

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

Enclosure: As stated

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