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John C. Carr, Acting Director
Division of Rules and Records
Office of Administration
US NRC
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-80-270
rec'd 5-20-80

RE: FOIA-79-441

Dear Mr. Carr:

I must apologize for having taken so long to get back to you. Mr. Leach has asked that I follow-up on his request of October 10, 1979. We are both attorneys for the Black Hills Alliance. It is my understanding from your letter of November 19, 1979 that the correspondence file on the Edgemont Uranium Mill Decommissioning has been copied by Mr. Stephen Isaacs of your staff. I would ask that the files be checked and copies made of any correspondence which may have occurred after the file was originally copied in late October. Please note that our request includes all "memoranda and reports" as well.

You note in your letter that, other than the correspondence file, the only documents pertaining to the request are the four reports listed in the appendix to your letter. As per your suggestion I will write the Public Documents Room for the documents of those four that we need; however, please check your files to make sure that there are no other documents of any kind concerning the proposed Draft EIS on the decommissioning of the Edgemont uranium mill and that none have been received since October 1979. If there are any other or new documents, we wish also to be furnished with copies of them.

A complete copy of the NRC files is needed by the Black Hills Alliance so that it may intelligently assess the considerations being made by your agency and the Tennessee Valley Authority in the decommissioning of the old uranium mill and tailings piles. A fully knowledgeable analysis cannot be made without copies of these files. Our first and only concern, of course, is the health of the people and the quality of the environment of western South Dakota which may be seriously affected by the the decommissioning. The Alliance has several members who live near the tailings piles or who have property in Edgemont. Other members frequent the southern Black Hills area for recreation and other purposes. Members throughout the Black Hills are concerned about the methods that will be employed for the decommissioning because it may have an effect on their interests, especially if a substantial amount of radioactivity is released or a substantial amount of water used. The Alliance itself is concerned about these issues in addition to the general public interests of protecting the environment and the wildlife in the area. The organization has taken a special interest in uranium mining, milling and exploration, and has developed some expertise in these areas. We hope that with a complete file of the decommissioning in front of us, we can make valuable contributions to the plans for decommissioning that will protect the interests of our members and the public as well as the environment and the wildlife of the southern Black Hills.

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The Alliance has requested and here repeats its request that you waive any fees for copying and search time on the grounds that "furnishing the information can be considered as primarily benefitting the general public." 5U.S.C. 8552(a)(4)(A). The Senate Bill approved unanimously by the Judiciary Committee contained the language finally approved. The Senate Committee Report (93-854) states that "(t)his public-interest standard should be liberally construed by the agencies...." (p. 12). Congress clearly intended that the assessment of fees not be a bar to the use of the FOIA by private individuals or public interest groups. At the same time, it permitted the charging of fees so that corporations or individuals using the Act for private gains could be charged the cost of the services provided. The legislative history of the provision calling for a liberal interpretation of the phrase "primarily benefiting the public" suggests that all fees should be waived whenever the release of the information contributes to public debate on an important policy issue and when the person requesting the information is doing so for the purpose of contributing to the "uninhibited, robust and wide-open" debate on public issues which the Supreme Court has repeatedly held to be protected by the First Amendment. (see, e.g., NY Times v. Sullivan.) This approach suggests that all fees should be waived if two criteria are met: (1) the information released will contribute importantly to public debate on important policy issues and (2) the information was requested to be used for that purpose.

The request of the Alliance is, of course, for information which will be used solely by the Alliance and not for personal or private use. The Black Hills Alliance is a duly incorporated South Dakota non-profit, public interest, environmental, organization that has as its main purpose the gathering and dissemination to the general public of information concerning the environmental consequences of the development of the mining industry in western South Dakota; and, more particularly, the uranium industry in the Black Hills. The US Postal Service has granted the Alliance bulk rate stamp privileges as a non-profit educational organization.

Any information furnished to the Alliance is analyzed and summarized by the organization for its content that may be of particular interest to the public. The information is then used as the basis for the Alliance's frequent participation in public lectures, forums, seminars, conferences, classrooms, radio and television interviews and other public gatherings. I have attached a partial list of such public meetings in which the Alliance has had the privilege to give presentations concerning western South Dakota and the uranium industry. Much of the information furnished to the public at these meetings have come from Nuclear Regulatory Commission documents.

The Alliance also has many organizational publications including a newspaper, the Black Hills Report, which has a circulation nationally of around 1,500. Copies also go to several other countries. The Alliance has printed and distributed at least ten different brochures, pamphlets, information packets, and newsletters, the last being a mailing to approximately 10,000 people. Much greater mailings are planned for the future. Every Alliance publication is focused around the environmental consequences of the energy development of western South Dakota. Common topics are the scope of present uranium exploration activities in western South Dakota, the environmental histories of energy corporations, the affects of the uranium industry on water, livestock, and communities, the problems of exposure from low-level radiation resulting from the uranium industry (including mill tailings), and the problems industrial development may and is causing to agriculture in South Dakota. The mill decommissioning has been discussed in several articles already and

several major articles on the mill decommissioning are planned in the future for distribution to the public once we have more information on the plan and the effects of the decommissioning. We are greatly concerned about the cumulative effects all the projects, including the decommissioning, will have upon the people and the environment of the southern Black Hills.

The Alliance is a non-profit corporation. It is presently staffed solely by volunteers. Neither it nor any of its staff receive any profits from the use of information furnished to it. Both the organization and its staff have extremely limited resources, are constantly in debt and have little ability to pay the costs of FOIA requests.

The use of the information, such as that being requested here by the Black Hills Alliance, has resulted in a greater awareness of the public issues and facts concerning the uranium industry. It has already encouraged much discussion and debate in the state over the very important issues confronting the public, the environment, future generations, and the industry. Public participation at this stage in the industry's development in the Black Hills is crucial as the NRC as previously recognized. The public participation now will emphasize the public and environmental concerns so that they will be fully addressed by the NRC and other agencies involved before they act rather than after damage has occurred. The work of the Alliance in this respect certainly benefits the regulatory processes of the NRC. Once informed of the health, safety, and environmental issues and problems, the public is in a position to protect public interests. The Alliance is one of only a handful of environmental organizations in South Dakota and it is well-recognized as having taken the lead in furnishing information to the public and significantly contributing to public debate on important issues of NRC policy. Without any information, the Alliance would be foreclosed from performing its public function and the public would not be benefited.

In summary, Congress entrusted waiving of fees to the discretion of the agencies; it did so intending that the agencies interpret the provision liberally and consistently with Congress' intent that the Act contribute to public debate on major issues. The documents requested will in fact make an important contribution to that debate and were requested for that reason and for the protection of the health of the environment, Alliance members, and the public, and will be used in pursuit of those objectives.

Sincerely yours,

Andrew B. Reid

Andrew B. Reid, Attorney