

P.O. Box 26
Piedmont, South Dakota 57769

January 30, 1981

Director
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-81-47
rec'd 2-9-81

RE: Freedom of Information Act
Request

Dear Sir:

This is a request under the Freedom of Information Act, as amended (5 U.S.C. §552).

I am writing to request copies of all records, as defined in 10 CFR §9.3a(b), concerning Union Carbide Corporation's "Chord Project" northeast of Edgemont, South Dakota, with the exception of

- (1) The letter dated January 18, 1978 from S.H. Hanks, Deputy Regional Forester, Resources, U.S. Forest Service, Denver to Leland C. Rouse, Office of Nuclear Materials Safety and Safeguards, Fuel Processing & Fabrication Branch, NRC; and
- (2) Preliminary Draft dated September 27, 1977 of the Statement of Understanding between the U.S. Nuclear Regulatory Commission and the U.S. Forest Service of the Department of Agriculture and the State of South Dakota.

The Chord Project involves uranium mining and milling in the Craven Canyon-Robinson Flats area of the Southern Black Hills. It was first proposed by Union Carbide in approximately 1975-1976 and, because of the proposed mill, has been the subject of on-going discussion with the NRC.

As you know, the amended Act provides that if some parts of a file are exempt from release that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested materials are exempt from release that you provide me immediately with a copy of the remainder of the materials. I, of course, reserve my right to appeal any such decision.

If you determine that some or all of the materials are exempt from release, I would appreciate your advising me as to which exemption(s) you believe cover the material which you are not releasing.

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The amended Act, 5 U.S.C. §552(a)(4)(A), and your regulations at 10 CFR §9.14a permit you to reduce or waive any copying or location fees if that "is in the public interest because furnishing the information can be considered as primarily benefiting the public." 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 gain 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., New York 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.

This request is made on behalf of the Black Hills Alliance. 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 Union Carbide Corporation with respect to the Chord Project. 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 Project. The Alliance has several members who live near the Project area 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 Project 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 exploration, mining and milling, and has developed some expertise in these areas. We hope that with a

complete copy of the NRC files on the Project before us we can make valuable contributions to the Project plans as well as applications before the NRC that will protect the interests of our members and the public as well as the environment and the wildlife of the southern Black Hills.

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 non-profit, educational character of the Alliance has been recognized by the Internal Revenue Service, which has granted the Alliance 501(c)(3) status.

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. 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 has been previously provided to the NRC in connection with earlier FOIA requests (all of which have been granted a fee waiver). Much of the information furnished to the public at these meetings has come from NRC documents.

The Alliance also has many organizational publications including a newspaper, the Black Hills Report, which has a circulation nationally of 15,000 and a substantially higher readership. Copies also go to several other countries and articles are reprinted internationally through World Information Service on Energy and the Mobilization for Survival Newsletter (circulation over 100,000). The Alliance has printed and distributed over a dozen different brochures, pamphlets, information packets, and newsletters. 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 Craven Canyon/Chord Project has been discussed in several articles already and other major articles are planned in the future for distribution to the public once we have more information on the Project and its effects. We are greatly concerned about the cumulative effects all the projects, including the Chord Project, will have upon the people and the environment of the southern Black Hills.

The Alliance is a non-profit organization. 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 has 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 the 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 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.

As provided for in the amended Act, I will expect to receive a reply within 10 working days.

Sincerely yours,

Phyllis R. Girouard
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