



DUDLEY THOMPSON ASSOCIATES

2197 STRATTON DRIVE
POTOMAC, MARYLAND 20854
(301) 279-7555

June 8, 1982

APPEAL OF INITIAL FOIA DECISION

82-A-9E(82-207)
Rec'd 6-10-82

FOIA-82-207

Mr. William J. Dircks
Executive Director for Operations
US Nuclear Regulatory Commission
Washington DC 20555

Dear Mr. Dircks; *Bill*

Under the provisions of §9.11, 10 CFR Part 9, this constitutes a formal appeal of the denial of my April 21, 1982 Freedom of Information Act request (FOIA-82-207), issued jointly by Joseph M. Felton and Richard C. DeYoung on May 28, 1982, and received by me on June 1, 1982.

Certain items, enumerated in Appendix A of Mr. Felton's May 28 denial letter, were denied on the basis that they allegedly contain advice, opinions and recommendations of the staff with respect to proposed enforcement actions.

With the exception of two items (EA 82-43 and 82-50), it cannot be cogently argued that the denied information is predecisional, since the NRC has publicly set forth its decision concerning the enforcement actions involved. While it is true that all but one (EA 82-57) of the enforcement actions involved were in the nature of proposed NRC civil penalties, it is artfully disingenuous to contend that these actions are in a predecisional phase, thus subject to Exemption 5, in view of publicly stated NRC decisions. In point of fact, NRC's decision point on civil penalties is reached at the time of proposing a civil penalty. Any modification to that decision is not made on the basis of preexisting staff advice, but rather on the basis of additional information from the affected licensee, and the staff evaluation of that response. It cannot be argued that the denied information constitutes predecisional material, since the decision had in fact been made on each of the cases in question.

In addition, Exemption 5 applies to information "...which would not be available by law to a private party in litigation with the NRC." (10 CFR 9.5(a)(5)). I submit that the denied information would clearly be available under discovery in the hearing process or in any court case, thus making it inappropriate for the information in question to be withheld under Exemption 5.

William J. Dircks
June 8, 1982

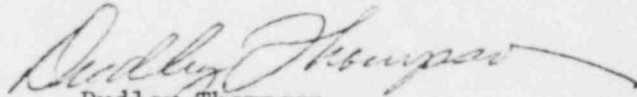
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The purpose of the Freedom of Information Act is to make the workings of government more understandable to the public. As onerous as FOIA has been to the staff, one cannot logically contend that denial of information because initial advice, opinion and recommendations may have differed from the final action actually taken contributes to a better understanding of the decision-making process within the NRC. There is nothing in the decision-making process associated with enforcement actions that warrants withholding information about it as "contrary to the public interest." Quite the opposite, disclosure contributes to public understanding, thus it is in the public interest to disclose.

With the exception of information associated with Enforcement Actions EA 82-43 and 82-50, I hereby request reversal of the initial decision denying me the items enumerated in Appendix A to Mr. Felton's May 28 letter to me.

Thank you for your prompt attention to this matter.

Sincerely,


Dudley Thompson
President

cc: J. M. Felton
R. C. DeYoung



DUDLEY THOMPSON ASSOCIATES

2197 STRATTON DRIVE
POTOMAC, MARYLAND 20854
(301) 279-7555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-207

Rec'd 4-22-82

April 21, 1982

Joseph M. Felton
Director
Division of Rules and Records
US Nuclear Regulatory Commission
Washington, DC 20555

FOIA Request

Dear Mr. Felton:

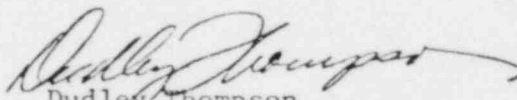
Pursuant to the Freedom of Information Act and 10CFR Part 9, I hereby request the following information for all NRC enforcement actions involving civil penalties or NRC orders on which NRC action was initiated or completed since January 1, 1982.

1. Inspection or investigation reports on which the actions were based.
2. Proposed actions prepared by cognizant NRC regional offices.
3. Notices of Violation, with forwarding letters.
4. Proposed civil penalties.
5. Orders.
6. Licensee or vendor replies, if any.
7. Records of any related meetings with affected firms.
8. Imposition orders, if any.
9. Enforcement Notices.
10. Press Releases.
11. Transcripts of related Commission meetings.
12. Congressional inquiries and NRC responses thereto.

Under the terms of §9.14a, 10CFR9, I hereby further request waiver of fees associated with this request. In the event search is estimated to require more than four hours in the aggregate, please notify me of the estimated cost before proceeding.

Thank you for your prompt attention.

Sincerely,


Dudley Thompson
President

PDR
~~82-207-20281~~



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

May 28, 1982

Mr. Dudley Thompson
President
Dudley Thompson Associates
2197 Stratton Drive
Potomac, MD 20854

IN RESPONSE REFER
TO FOIA-82-207

Dear Mr. Thompson:

This is in response to your letter dated April 21, 1982, in which you requested, pursuant to the Freedom of Information Act, 12 separate categories of documents for all NRC enforcement actions involving civil penalties or orders on which NRC action was initiated or completed since January 1, 1982.

Item 1, plus items 3 through 12 of your request are available for inspection and copying at our NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

In our meeting held on April 29, 1982, the problems associated with item 2 of your request were discussed. Item 2 asked for proposed actions by cognizant NRC regional offices. The participants at the meeting, including yourself, agreed this item might contain information which could be withheld pursuant to Exemption 5. Mr. Liberman agreed to generate a list of documents falling within item 2 of your request. This list is attached as Appendix A. Upon reviewing the list, the Office of Inspection and Enforcement and the undersigned agree that this listing enumerates documents containing information of a draft and/or preliminary nature containing advice, opinions and recommendations of the staff with respect to proposed enforcement actions by cognizant NRC Regional Offices. These documents are being withheld in their entirety, 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).

Pursuant to 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 denial are the undersigned and Mr. Richard C. DeYoung, Director, Office of Inspection and Enforcement.

The denial may be appealed to the Commission's Executive Director for Operations within 30 days from the receipt of this letter. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the

PDR
~~8207120279~~

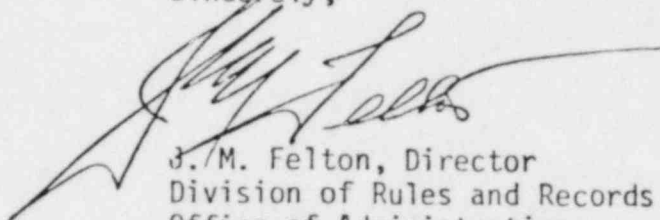
Mr. Dudley Thompson

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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."

This completes NRC's action on your request.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Felton", with a long horizontal flourish extending to the right.

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

Enclosure: As stated

PROPOSED CIVIL PENALTY AND ORDER ACTIONS RECEIVED FROM REGIONAL OFFICES
DURING THE PERIOD JANUARY - APRIL 1982

<u>Enforcement Action Number</u>	<u>Date Received</u>	<u>Status</u>
82-25	2-1-82	Proposed CP of \$16,000 issued to Consumers Power Company (Palisades) on 5/12/82.
82-27	2-8-82	Proposed CP of \$9,000 issued to Nuclear Energy Services on 3/16/82.
82-28	2-10-82	Proposed CP of \$3,600 issued to New England Nuclear on 3/30/82
82-38	2-11-82	Proposed CP of \$6,000 issued to RAD/IRID on 3/30/82
82-39	2-12-82	Proposed CP of \$50,000 issued to TVA (Sequoyah 2) on 3/29/82.
82-43	2-25-82	Proposed CP action under review.
82-44	3-5-82	Proposed CP of \$500 issued to Salisbury Engineering Co. on 4/8/82.
82-45	3-8-82	Proposed CP of \$4,000 issued to Consolidated X-Ray Service Corp. on 4/12/82.
82-50	3-16-82	Proposed CP action under review.
82-51	3-17-82	Proposed CP of \$2,000 issued to The University of Michigan on 4/12/82.
82-52	3-22-82	Proposed CP of \$50,000 issued to TVA (Browns Ferry 1, 2 & 3) on 5/7/82.
82-57	4-5-82	"Rescission of October 2, 1980 Confirmatory Order" issued to Commonwealth Edison Company (Dresden 3) on 4/12/82.
82-58	4-9-82	Proposed CP of \$50,000 issued to Virginia Electric and Power Company (Surry 1) on 5/10/82.