



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

AUG 26 1982

Harold J. Spelman, Esquire
Harold J. Spelman and Associates
P.O. Box 190
West Chicago, IL 60185

IN RESPONSE REFER TO
FOIA-82-A-16 (82-255)
FOIA-82-A-17 (82-256)
FOIA-82-A-18 (82-257)

Dear Mr. Spelman:

This is in response to your letter dated July 28, 1982, in which you appealed Mr. J. M. Felton's June 25, 1982 denials of your Freedom of Information Act requests for documents relating to the preliminary draft environmental impact statements for the Rare Earths Facility in West Chicago, Illinois.

Acting on your appeal, I have carefully reviewed the record in this case and have determined, for the reasons stated in Mr. Felton's June 25, 1982 letters, that the documents listed on the Appendix to this letter remain exempt 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) of the Commission's regulations. Your appeal is, therefore, denied.

In making this decision, I have considered your arguments as to the applicability of the National Environmental Policy Act (NEPA) and Council on Environmental Quality's (CEQ) regulations in regard to releasing underlying documents. "Underlying documents", as used in CEQ's regulations, relate primarily to references and other factual materials used by an agency in preparing an Environmental Impact Statement (EIS) rather than preliminary staff drafts of the EIS itself. Therefore, the agency's continued withholding of these preliminary draft documents is consistent with the intent of exemption (b)(5) of the Freedom of Information Act. (See Russell, v. Department of the Air Force, No. 81-2005, slip op. (D.C. Cir., July 23, 1982).)

This is a final agency action. As set forth in the Freedom of Information Act (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in either the district in which you reside, have your principal place of business, or in the District of Columbia.

Sincerely,

William J. Dircks
Executive Director for Operations

APPENDIX

1. 12/80 Preliminary draft EIS.
2. 5/1981 Preliminary draft EIS.
3. 7/24/81 Memo to Crow, NMSS, from Fonner, NRC, Office of Executive Legal Director (ELD), re: "Alternatives for Kerr McGee West Chicago EIS".
4. 2/82 Preliminary draft EIS.
5. Undated Draft "Summary and Conclusions" section of the EIS.
6. Undated Comments by R. G. Page noted in text of the draft "Summary and Conclusions".
7. Undated Comments by R. E. Cunningham noted in text of the draft "Summary of Conclusions".



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

June 25, 1982

Harold J. Spelman, Esquire
Harold J. Spelman and Associates
200 High Street
P.O. Box 190
West Chicago, IL 60185

IN RESPONSE REFER
TO FOIA-82-255

Dear Mr. Spelman:

This is in response to your letter dated May 26, 1982 in which you requested, pursuant to the Freedom of Information Act, copies of all records relating to the May 1981 preliminary draft environmental impact statement (EIS) for the Rare Earths Facility in West Chicago, Illinois.

As you know, with the technical assistance of a contractor, Department of Energy's Argonne National Laboratory, NRC developed and distributed a draft EIS, NRC Report No. NUREG-0904 "Draft Environmental Statement related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois" dated May 1982, a copy of which was provided to you. By notice published May 20, 1982 (47 FR 21943), NRC informed the public that this draft EIS is available for public inspection and comment and that comments are due by July 6, 1982. Upon consideration of comments submitted on this draft EIS, NRC will prepare a final EIS.

A draft EIS and a final EIS, and records relating to an EIS, are routinely made available to the public in accordance with provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq., 4332) and NRC's regulations found at 10 CFR Part 51. Thus, with the exception of records discussed below, pertinent NRC records which to date have been generated and retained have already been made available for public inspection and copying at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555; the Local Public Document Room for the Kerr-McGee site which is located in the West Chicago Public Library, 332 E. Washington Street, West Chicago, Illinois 60185; and distributed to persons, such as the Mayor of West Chicago and yourself, on the Service list. Such records include the Kerr-McGee decommissioning plan and amendments, which are referenced in the preface of the draft EIS.

Upon search of pertinent files for any records subject to your request which have not already been made available to the public as noted above, NRC staff located three records. I have been informed by staff of NRC's Office of Nuclear Material Safety and Safeguards that most of NRC's communications to Argonne were not committed to writing, or retained, but were, instead, transmitted to Argonne by means of telephone conversations and meetings.

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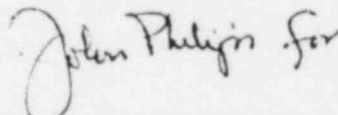
The record identified on enclosed Appendix A is being provided to you at this time.

Two additional records, identified on enclosed Appendix B, generated by NRC's staff attorney and contractor, are working documents in which recommendations, opinions and advice are expressed, leading toward development of the published draft EIS (NUREG-0904). There are no releasable segregable portions of these documents. We believe that release of these records would impair NRC's ability to freely formulate proposed policies in such matters. Therefore, these records are being withheld from public disclosure pursuant to exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5).

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 denial are the undersigned and Mr. John G. Davis.

This 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 Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision".

Sincerely,



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

Enclosures: As stated

Appendix A

Record Enclosed with NRC response to this request:

1. 5/11/81 Letter from Saguinsin, Argonne, to Nixon, NMSS, NRC, transmitting copies of the May 1981 preliminary draft EIS.

Appendix BRecords withheld:

1. 5/19/81 Preliminary draft EIS.
2. 7/24/81 Memo to Crow, NMSS, from Fonner, NRC, Office of Executive Legal Director (ELD), re: "Alternatives for Kerr McGee West Chicago EIS".

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200 HIGH STREET
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May 26, 1982

FREEDOM OF INFORMATION ACT REQUEST

FREEDOM OF INFORMATION
ACT REQUEST
FOIA-82-255
Rec'd 6-1-82

Freedom of Information Act
Director, Office of Administration
United States Nuclear Regulatory Commission
Washington, D. C. 20555

RE: Any Preliminary Draft
Environmental Impact Statement
for West Chicago, Illinois
Rare Earth Facility prepared
by Argonne National Laboratory
submitted in May, 1981 to
Nuclear Regulatory Commission

Dear Sir:

Pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. §552), and Regulations promulgated by your Agency thereunder (10 C.F.R. §9.1) (the "Act" and "Regulations"), we hereby request disclosure of copies of all documents and other materials available from your Agency relating to the above-referred matter.

Your Agency is believed to have custody of these documents, but if it does not, we hereby request prompt notice of their current location. Under the Act, Regulations and pertinent case law, these documents are available to us and to other members of the public. Current interpretation of the Act and Regulations does not exempt these documents from required disclosure.

In the event that this request is denied, in whole or in part, we hereby request a detailed statement of the reason or reasons for withholding such documents from the public and an index or similar statement of the nature of the documents withheld. In the event of deletions, we request that a reason be stated for each partial denial of access. To expedite this request, we would be willing to discuss specific instances of denial, whether whole or partial, deletion, or other exemption claims in advance of a final decision by the Agency.

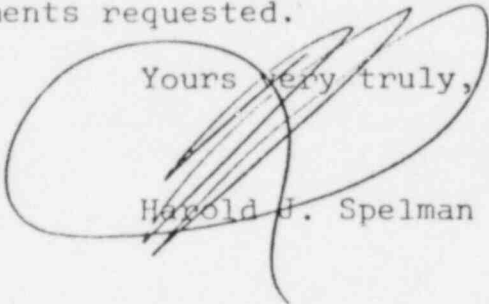
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Nuclear Regulatory Commission
May 26, 1982
RE: Freedom of Information Act
Page Two

In accordance with the Act and Regulations, we expect that your usual fees for searching and reproduction of records will be waived because of our client's status as a local government entity. 16 C.F.R. §914a (a)(2). Your furnishing the requested information will be of primary benefit to the public since our concern is the health and safety of the citizens of West Chicago, Illinois, the site of the Kerr-McGee facility in the above referenced matter. In order to expedite this request in the event your Agency does not waive search and copying fees for the requested documents, we are willing to incur reasonable charges for those expenses, in accordance with the Act and Regulations, upon presentation by your Agency of the documents and an invoice.

Please direct written inquiries and notice to the above given West Chicago, Illinois address. Our telephone number is 312/231-1580. We look forward to hearing from you within ten (10) business days with the documents requested.

Yours very truly,



Harold J. Spelman

HJS:PLF:ba0