

FOIA - 93-64



720005

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

RESPONSE TYPE
 FINAL PARTIAL LIST
 DATE JUN - 2 1993
 DOCKET NUMBER(S) (if applicable)

REQUESTER *Lance Hughes*

PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- No agency records subject to the request have been located.
 - No additional agency records subject to the request have been located.
 - Requested records are available through another public distribution program. See Comments section.
 - Agency records subject to the request that are identified in Appendix(es) _____ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
 - Agency records subject to the request that are identified in Appendix(es) *A, B, C, D* are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
 - The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
 - Agency records subject to the request that are identified in Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.
 - Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
 - Agency records subject to the request are enclosed. *
 - Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- Fees**
- You will be billed by the NRC for fees totaling \$ _____.
 - You will receive a refund from the NRC in the amount of \$ _____.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated _____, No. _____

PART II. A.—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

- Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

COMMENTS

*The enclosed records released in their entirety or in part are identified on the enclosed Appendices A, B, C, and D. (349 pages)

The staff is continuing to review records regarding your FOIA request. We will notify you of the charges upon completion of the review.

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

[Signature]

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 PDR FOIA
 HUGHES93-64 PDR

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST
(CONTINUATION)

FOIA NUMBER(S)

FOIA - 93-64

DATE

JUN - 2 1993

PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) D are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)

2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)

3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)

Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)

The information is considered to be confidential business (proprietary) information.

The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).

5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:

Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.

Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)

Attorney-client privilege. (Confidential communications between an attorney and his/her client.)

6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)

7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)

Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))

Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7 (C))

The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))

OTHER

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission 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 the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECRETARY	IG
<i>A. Bert Davis</i>	<i>Regional Administrator, Region III</i>	<i>Appendix D</i>	<input checked="" type="checkbox"/>		

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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."

APPENDIX A
RECORDS RELEASED TO REQUESTER

NUMBER	DATE	DESCRIPTION
1.		SECY-92-249 entitled "FINAL PLAN FOR THE ENHANCED PARTICIPATORY RULEMAKING PROCESS ON THE RADIOLOGICAL CRITERIA FOR DECOMMISSIONING," dated October 28, 1992. (3 pages)
2.		Memorandum for Hugh Thompson, DEDO from Francis X. Cameron, OGC, dated November 9, 1992. (8 pages)
3.		Note from Francis X. Cameron to Dennis Sollenberger, OSP dated January 4, 1993. (6 pages)
4.		Preparatory Meeting Agenda for NRC Radiological Criteria Workshop dated January 11, 1993. (1 page)
5.		SECY-93-011 entitled "STATUS REPORT ON THE ENHANCED PARTICIPATORY RULEMAKING ON THE RADIOLOGICAL CRITERIA FOR DECOMMISSIONING" dated January 25, 1993. (96 pages)
6.		Slides presented by Michael Weber for the Enhanced Participatory Rulemaking Workshops. (7 pages)
7.	1/6/93	Note from Chip to Gene re NRC-EPA meeting on January 8, 1993 with attached draft agenda (7 pages)
8.	--	Enhanced Participatory Rulemaking Simulation Workshop January 11-12, 1993 (1 page)
9.	11/09/92	Ltr. to Thompson from Cameron re: Workplan for Implementation of the Enhanced Participatory Rulemaking (including Michael Weber's handwritten notes) (9 Pages)
10.	12/31/92	E-Mail note to Weber, NMSS from Cameron, OGC re: Be Prepared to Run Through Presentations and Agenda at Simulation (1 Page)

APPENDIX B

DOCUMENTS TO BE RELEASED IN THEIR ENTIRETY

<u>DATE</u>	<u>DESCRIPTION</u>
1. 11/20/92	E-Mail note to Addressees from Michael Weber [mfw] re: Schedule for EPR Workshops (1 page)
2. 12/1/92	Michael Weber's Monthly Conference Call notes (4 pages)
3. 12/16/92	E-Mail note to W. R. Lahs [wrl] re: Upcoming Meetings with Keystone (1 page)
4. 12/16/92	E-Mail note to Addressees from Michael Weber re: Update on EPR [Information Only; no action required] (2 pages)
5. 12/18/92	E-Mail note to Chip Cameron [fxc] from Michael Weber re: Alternate Dates for Simulation Workshop (1 page)
6. 12/23/92	Update on the Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning (4 pages)
7. 12/23/92	E-Mail note to Addressees from Michael Weber re Update on the EPR (1 page)
8. 12/30/92	E-Mail note to Chip Cameron [fxc] from Michael Weber re: Times for the Simulation Workshop (1 page)
9. 12/30/92	E-Mail note to Chip Cameron [fxc] from Michael Weber re: Reply on Keystone Summary (1 page)
10. 1/6/93	Michael Weber's marked up copy of draft agenda for NRC Site Cleanup Criteria Workshop (4 pages)
11. 1/11/93	NRC Radiological Criteria Workshop Preparatory Meeting Agenda and issues discussion matrix (2 pages)
12. 1/11/93	Michael Weber's notes taken at meeting (3 pages)
13. 1/11-12/93	Attendees list at EPR Meeting (1 page)
14. 1/14/93	Update on the EPR (2 pages)
15. no date	Notes on Regulatory Approaches (1 page)
16. no date	Site Cleanup Workshops-Anticipated Questions to NRC Staff (1 page)
17. no date	Slides for EPR Workshop by Michael Weber (7 pages)
18. no date	Milestones for EPR - site cleanup criteria (1 page)

To be released entirely

	<u>Date</u>	<u>Description</u>
1.	Undated	Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning (7 pages)
2.	Undated	Milestones - Enhanced Participatory Rulemaking - Site Cleanup Criteria (1 page)
3.	Undated	NAC Site Cleanup Criteria Workshop (1 page)
4.	Undated	Public Workshop to Exchange Information and Lessons Learned in Remediating Radioactively Contaminated Sites (11 pages)
5.	Undated	Update on the EPR (2 pages)
6.	Undated	Update on the EPR (2 pages)
7.	Undated	Ltr F. X. Cameron to R. Brown re: rulemaking criteria for decommissioning (2 pages)
8.	Undated	Radiological Criteria for Decommissioning of NRC-licensed Facilities; Workshops (19 pages)
9.	Undated	Handwritten notes (Regulatory Approaches) (1 page)
10.	11/92	A Summary of NRC's Interim Radiological Cleanup Criteria and Current Dose Bases (10 pages)
11.	11/18/92	Note M. F. Weber to various personnel re: revised issues paper for rulemaking (41 pages)
12.	11/20/92	Note M. F. Weber to various personnel re: schedule for EPR workshops (2 pages)
13.	11/24/92	Note M. F. Weber to various personnel re: update on the enhanced participatory rulemaking (2 pages)
14.	12/11/92	Note M. F. Weber to various personnel re: update on EPR (1 page)
15.	12/16/92	Note from M. F. Weber to various personnel re: update on EPR (2 pages)
16.	12/23/92	Note from D. G. Wiedeman to M. Weber re: regional representation; 12/23/92 note M. F. Weber to various personnel re: update on the EPR; Update on the Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning (6 pages)
17.	12/92	Decommissioning Case Studies (27 pages)

To be released entirely

	<u>Date</u>	<u>Description</u>
18.	12/31/92	Memo A. B. Davis to C. E. Norelius re: workshops on establishment of radiological criteria for decommissioning of NRC-licensed facilities (1 page)
19.	01/06/93	NRC Site Cleanup Criteria Workshop draft agenda (4 pages)
20.	01/11-12/93	Enhanced Participatory Rulemaking Simulation Workshop sign-in sheet w/attachments (4 pages)
21.	01/19/93	NRC Site Cleanup Criteria Workshop draft agenda (4 pages)
22.	01/25/93	Newspaper article (2 pages)
23.	--	International Decommissioning Activities (3 pages)
24.	--	Milestones - (- page)

To be withheld in part

	<u>Date</u>	<u>Description</u>	<u>Exemption</u>
1.	Undated	Observer Registration sheet (12 pages)	6
2.	01/27-28/93	NRC Site Cleanup Criteria Workshops participants list (4 pages)	6

October 28, 1992

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MLO

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

FROM: Samuel J. Chilk, Secretary /s/

SUBJECT: SECY-92-249 - FINAL PLAN FOR THE ENHANCED
PARTICIPATORY RULEMAKING PROCESS ON THE
RADIOLOGICAL CRITERIA FOR DECOMMISSIONING

The Commission (with all Commissioners agreeing) has approved the staff plan for conducting workshops as set forth in SECY-92-249 subject to the comments below, the staff requirements memorandum dated September 9, 1992 on the Enhanced Participatory Process (attached), and the attached editorial changes.

1. Practicality and reasonableness are fundamental benchmarks that must be applied in this rulemaking. Consequently, the staff should identify actual cases for review by workshop participants which include several types of facilities and cover a range of sites. One example which might be illustrative is the case mentioned in the Department of Defense testimony prepared for the canceled September 16, 1992 hearings where site-specific negotiations led to a standard that was not technically feasible or cost-effective. Presentation of a situation where application of a standard and cleanup technology was "successful" as well as one that was "not successful" (including cost information on both), would be useful in illustrating issues involving "objectives", "risk", and "practicality". Likewise, objective 4, "Return to Background Levels," (see page 14 of Enclosure B) provides an overly simplistic characterization of a complex technical issue which should be modified to indicate some of the difficulties of implementing such an approach.

PDR # 1211200032
SECY NOTE: THIS SRM, SECY-92-249, AND THE VOTE SHEETS OF THE CHAIRMAN, AND COMMISSIONERS ROGERS, CURTISS AND de PLANQUE WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

A-1

2. Consistent with the SRM dated April 15, 1992 on the March 11, 1992 Commission briefing and SECY-92-045, all participants and interested groups should be advised of the manner and extent to which the criteria developed in this rulemaking would be used. Emphasis should be placed on the number and size of sites for which the criteria would apply, and the tradeoffs with stringency and ease and reliability of application. In Issue II (see page 21 of Enclosure B), practicality is only attributed to the Risk Limit or Risk Goal approach. Practicality is also a factor in the other approaches.
3. A discussion of how the process of an ALARA analysis can be documented, particularly the cost-benefit analysis, may prove helpful to workshop participants. Cost is often left out of the analysis, and sometimes the "reasonably" is also not factored into the analysis. The use of this process needs a better explanation regardless of the objective that is finally proposed.
4. The Commission has consistently maintained that the agency must continue to provide adequate protection of the public health and safety and the environment while pursuing this initiative to establish generic criteria related to decommissioning. Accordingly, the Federal Register notice and the Issues Paper should reflect that case- and activity-specific risk decisions will continue to be made, as necessary, during the pendency of this process (e.g., in order to conduct site decommissioning and license termination).
5. The discussion of previous burials (see page 34 of Enclosure B, Secondary Issue D) should include a range of options instead of simply no action or exhumation.

The staff should incorporate the above comments and editorial changes into the Federal Register notice and the Rulemaking Issues Paper. The Federal Register notice should be forwarded to the Secretary for signature and publication.

(EDO/OGC)

(SECY Suspense:

12/18/92)

The Commission (with the Chairman and Commissioners Rogers, Remick and de Planque agreeing) has approved the staff recommendation to not include a discussion of compatibility in the enhanced participatory rulemaking workshops. Commissioner Curtiss had no objection to the issue of compatibility being discussed in the context of this rulemaking.

The workshop discussions could be improved if all participants were provided additional background material in advance. As such, the Issues Paper and other background material should be made available in the Public Document Room (PDR), provided to participants, and made available to individual members who plan to attend the workshops or provide written comments.

(EDO) (SECY Suspense: 12/18/92)

For inclusion in the rulemaking issues paper, the staff should develop a primer describing the various terms and concepts associated with the Best Effort (technology-based) approach from the various environmental statutes for use by workshop participants and other interested individuals.

(EDO) (SECY Suspense: 2/19/93)

For inclusion in the rulemaking issues paper, the staff should obtain recent information on activities in other countries, particularly in France, England and Germany. These countries are involved in large decontamination and decommissioning projects and may possess information that could be useful to workshop participants.

(EDO) (SECY Suspense: 2/19/93)

Attachments:
As stated

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OIG
Office Directors, Regions (via E-Mail)
OP, SDBU/CR, ASLBP (via FAX)