



OFFICE OF THE  
SECRETARY

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

PDR (A-37)

September 28, 1990

Patrick M. Snyder, Esq.  
407 Cortland Savings Bank Building  
1 North Main Street  
Cortland, New York 13045

Re: FOIA Appeal 90-A-38C

Dear Mr. Snyder:

This letter responds to your August 31, 1990 appeal of this Agency's denial of the documents identified on Appendix D of our July 31, 1990 response to FOIA 90-268.

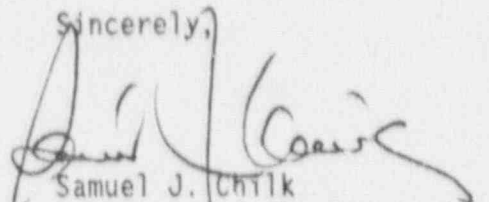
In response to your appeal, the documents withheld were reviewed again. On the basis of this review, it has been determined that the documents identified in Appendix D were properly withheld pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5).

The documents withheld contain the individual views, concerns, opinions, and recommendations of NRC staff and Commissioners. They were used as a means of providing advice to Commissioners and to NRC staff and to make the positions and requirements of the individual Commissioners known to the other Commissioners as well as to subordinate Agency employees.

These documents are predecisional as they were used in formulating agency policy. The response sheets are also deliberative as they contain directives to subordinate staff personnel, and reflect the exchange of ideas between the Commissioners and subordinate Agency personnel. Release of these documents would stifle the open and frank exchange of ideas. Moreover, disclosure of the response sheets could impair the very integrity of the deliberative process.

This letter represents final Agency action on your August 31, 1990 appeal. Judicial review of the denial of this information is available in Federal District Court in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

  
Samuel J. Chilk  
Secretary of the Commission



**PART E. B - APPLICABLE EXEMPTIONS**

Records subject to the request that are described on the enclosed Appendix(es) D are being withheld in their entirety or in part under the Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(g) 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 reasons 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 fact 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 reasons 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 them 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 E. 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 and Resources Management, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EDO
John C. Hoyle	Assistant Secretary of the Commission	App. D	X	

**PART E. D - APPEAL RIGHTS**

The denial by each denying official identified in Part E. C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, 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 C  
DOCUMENTS BEING PLACED IN THE PDR

NUMBER	DATE	DESCRIPTION
1.	6/8/89	SECY-89-177 - Review of Existing Regulatory Requirements For Extended Interim Storage of Low-Level Radioactive Waste. (14 pages)
2.	6/28/89	Commissioner Carr's Response Sheet for SECY-89-177, attaching comments. (2 pages)
3.	6/28/89	Commissioner Curtiss' Response Sheet for SECY-89-177. (1 page)
4.	7/5/89	Memo from Samuel J. Chilk to Victor Stello, subject: SECY-89-177. (1 page)
5.	1/24/90	Memo from S. J. Chilk to the Commission, subject: Staff Requirements Memorandum - Briefing on Governors' Certification of Low Level Waste Sites, attaching Comm. Curtiss' comments. (3 pages)
6.	Undated	Draft unsigned memo from Vandy Miller, subject: Storage of Low-Level Radioactive Waste (SP-90-80). (1 page)

APPENDIX D  
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY  
PURSUANT TO EXEMPTION 5

NUMBER	DATE	DESCRIPTION
1.	6/21/89	Commissioner Roberts' Response Sheet for SECY-89-177. (1 page)
2.	6/23/89	Memorandum from Susan Bilhorn to Comm. Rogers, subject: Review of Existing Regulatory Requirements For Extended Interim Storage of LLW. (2 pages)
3.	6/26/89	Note from Margaret Federline to Commissioner Carr and his assistants, re: SECY-89-177. (1 page)
4.	6/27/89	Memorandum from Susan Bilhorn to Comm. Rogers, subject: Review Recommendation For SECY-89-177. (2 pages)
5.	6/27/89	Commissioner Rogers' Response Sheet for SECY-89-177, attaching comments and marked-up draft copy of General Statement of Policy. (8 pages)
6.	6/29/89	Chairman Zech's Response Sheet for SECY-89-177, attaching comments. (2 pages)
7.	Undated	Margaret Federline's marginal notes on SECY-89-177. (14 pages)
8.	Undated	Margaret Federline's notes on SECY-89-177 routing slip. (1 page)

PATRICK M. SNYDER, P.E., ESQ.

ENVIRONMENTAL ENGINEER AND ATTORNEY

407 CORTLAND SAVINGS BANK BLDG.

1 NORTH MAIN STREET

CORTLAND, NEW YORK 13045

(607) 753-8050

June 8, 1990

FREEDOM OF INFORMATION  
ACT REQUEST

Chairman Kenneth Carr  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

FOIA-90-268  
Rec'd 6-12-90

Dear Mr. Carr:

This is in reference to your recently announced policy concerning on-site storage of low level radioactive waste at power plants after 1996. According to your May 3rd description of this policy, you will "not look favorably" upon long term storage at nuclear power plants after January 1, 1996.

Your policy is contrary to existing provisions which apply to most operating licenses. There are many people in Cortland County who think this policy has the smell of radioactive blackmail attached to it. They are questioning whether you think it is going to make dump building any easier.

On behalf of Cortland County and pursuant to the Freedom of Information Law (5 U.S.C. 552), I hereby request a complete copy of the record upon which this policy is based, including any correspondence requesting or concerning this policy, and a copy of all transcripts or recordings of discussions of this policy at Commission meetings.

Representatives of Cortland County were in your headquarters at Rockville, Maryland on May 1, 1990, at which time we had a very lengthy discussion of the subject of license amendments and on site storage with supposedly knowledgeable representatives of your agency. There was no mention of this policy. Your agency's deception, whether intentional or not, is a violation of our due process rights, and we hereby request that this policy be immediately rescinded.

It appears that you are playing games of brinkmanship with this policy. Are you going to shut down the nuclear power plants on January 1, 1996 if the state doesn't have an operating disposal facility on that date? This kind of behavior doesn't do much for your credibility as it pertains to regulating reactor safety.

Sincerely,

*Patrick M. Snyder*

PATRICK M. SNYDER

PMS:sq  
Enc.

9007100348

cc:

Governor Mario Cuomo  
Congressman Sherwood Boehlert  
Mr. Thomas R. Combs  
Mr. John Randall  
Mr. Gene Gleason  
Ms. Cindy Monaco  
Director, Division of Freedom of Information and Publication  
Services



MAY 3, 1990

REF I

MAY 16 1990

AGREEMENT AND NON-AGREEMENT STATES  
COMPACT DISTRIBUTION

STORAGE OF LOW-LEVEL RADIOACTIVE WASTE (SP-90-80)

In a letter dated February 16, 1990 (SP-90-27) we transmitted to you a copy of a Nuclear Regulatory Commission (NRC) Information Notice No. 90-09, "Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees." This notice provided guidance to licensees planning to submit license amendment request for extended interim storage of waste. The notice stated that storage is not a substitute for disposal, and that waste should be stored only when disposal capacity is not available and for no longer than necessary. Also, the notice stated that license amendment requests should include final disposal plans which specify when and where waste will be shipped for disposal, and that storage authorizations will not normally be granted for more than five years. This notice is consistent with discouraging long-term storage beyond January 1, 1996.

Since this information notice was sent to you, the Commission in a memorandum dated February 14, 1990 informed the NRC staff that, "...the Commission will not look favorably upon long-term onsite storage of low-level waste beyond January 1, 1996." That date is the final deadline for development of low-level radioactive waste (LLW) disposal capacity. States, either acting alone or as part of a Regional Compact, which are unable to provide LLW disposal by that date must take title to, and possession of LLW generated in their States, as well as be liable for any direct or indirect damages for failing to do so promptly.

The purpose of this letter is to encourage Agreement States to adopt a similar view regarding storage of LLW beyond January 1, 1996, and to inform their licensees, as appropriate, of their policy on extended storage of LLW.

If you have a different view on extended LLW storage, we would be interested in your position. A written expression of your position on this matter would be appreciated. If you have any questions, please contact Ms. Cardelia Maupin at 301-492-0312.

*Gandy L. Miller*  
Gandy L. Miller, Assistant Director  
for State Agreements Program  
State Programs  
Office of Governmental and Public Affairs

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