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May 22, 1991

\*Admitted only in Massachusetts

U.P.S. EXPRESS

William Taylor  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

APPEAL OF INITIAL FOIA DECISION

91A13E (91-81)

Rec'd 5-29-91

SUBJECT: APPEAL FROM INITIAL FOIA DECISION (FOIA-91-81)

Dear Mr. Taylor:

On behalf of Natives for a Clean Environment (NACE), and pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), I hereby appeal the April 2, 1991 decision of the Commission in partial response to FOIA-91-81 to withhold from disclosure the Office of Investigations (OI) file on the Sequoyah Fuels Corporation uranium procession plant in Gore, Oklahoma. A copy of the denial decision is enclosed.

The Commission's partial response to FOIA-91-81 claims that the OI file, specified in "Appendix A" of the response, is protected from public disclosure under FOIA Exemption 7, which applies to law enforcement records. NACE hereby requests that the Commission either reverse its decision refusing disclosure of the OI file or provide specific explanations of how each specific record within the OI file fits each of the requirements of Exemption 7, including a description of the contents of such records, and disclose any "segregable portions" of such records, as required by the FOIA.

The FOIA allows for the agency to withhold "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would" cause certain enumerated harms. NACE hereby requests, pursuant to 5 U.S.C. § 552(b)(7), that the Commission provide a full explanation of how the production of each specific record within the OI file on the Gore uranium procession facility would

- (A) interfere with enforcement proceedings,
- (B) deprive a person of a fair trial or impartial

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- adjudication,
- (C) constitute an unwarranted invasion of personal privacy,
  - (D) disclose the identity of a confidential source, or information provided only by such source,
  - (E) disclose investigative techniques and procedures, or
  - (F) endanger the life or physical safety of law enforcement personnel.

Please explain exactly how and to what extent (if at all) each specific record within the OI file at issue falls under any of the above exceptions.

To the extent that any portion of the OI file at issue is "reasonably segregable" from the exempted portions, NACE hereby requests, pursuant to 5 U.S.C. § 552(b), that the Commission grant public disclosure of such portion. If no portion of the OI file at issue is "reasonably segregable," please describe the Commission's reason for so finding, in the same level of detail as is required for claims of exemption. Mead Data Central v. Department of the Air Force, 566 F.2d 242, 260 (D.C. Cir. 1977).

In its response denying disclosure of the OI file, the Commission listed the file in "Appendix A" only as "Office of Investigations Entire File," and did not give a date for the file, stating only that it had "[v]arious dates." This response fails to provide the level of detail required under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). If this appeal is denied in any part, please specify which records or parts of records are being withheld, as well as the dates and subject matter of each withheld record. In any event, please provide a detailed list of records that comprise the entire OI file cited in "Appendix A," as well as the date and subject matter of each such record. Without such a listing, it is not possible for NACE to effectively present its case for why the records should be released, as provided by Mead Data Central, Inc. v. Department of the Air Force, 402 F.Supp. 460 (D.D.C. 1974), remanded, 566 F.2d 242 (D.C. Cir. 1977), aff'd, 575 F.2d 932 (D.C. Cir. 1978).

NACE is particularly concerned to know what investigation, if any, the withheld records relate to, the status of such investigation, and how the records fit within the six listed exceptions that comprise FOIA Exemption 7.

The Commission's final determination of this appeal is requested within the twenty-day period provided by 10 C.F.R. §9.29(b). The fee waiver request contained in the original FOIA request (enclosed) is hereby extended to any records provided pursuant to this appeal.

William Taylor  
May 22, 1991  
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Thank you for your attention to this appeal. Please call me  
at 202-328-3500 if you have any questions regarding the initial  
request and this appeal.

Sincerely,

*Diane Curran*

Diane Curran  
Counsel to Native Americans  
for a Clean Environment

Enclosures

cc: Lance Hughes,  
Acting Director, NACE



# RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA -- 91-81

RESPONSE TYPE

FINAL

☒ PARTIAL

DATE

APR 2 1991

DOCKET NUMBER(S) (if applicable)

REQUESTER

Diane Curran

## 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) \_\_\_\_\_ 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

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

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

FOIA NUMBER(S)

**FOIA -- 91-81**

DATE

**APR 2 1 1991**

**PART II B - APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendix(es) A 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
1. Ben B. Hayes, Director Office of Investigations		Appendix A	XX		

**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 Withheld in Entirety)

1. Various Dates      Office of Investigations Entire File (Exemption 7A)



HARMON, CURRAN, GALLAGHER & SPIELBERG

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February 27, 1991  
BY OVERNIGHT MAIL

\*Admitted only in Massachusetts

Donnie H. Grimsley, Director  
Division of Freedom of Information  
and Publication Services  
Office of Administration  
Mail Stop P-370  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-91-81  
Rec'd 2-28-91

SUBJECT: Freedom of Information Act Request

Dear Mr. Grimsley:

On behalf of Native Americans for a Clean Environment, and pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b), et seq., I hereby request that you make available copies of any and all documents in the Nuclear Regulatory Commission's possession that discuss any issues relating to the construction, operation, licensing, or re-licensing of the Sequoyah Fuels Corporation uranium processing plant in Gore, Oklahoma; and/or any documents that discuss inspection and/or enforcement issues relating to that plant.

NACE is familiar with and has access to documents that are already in the NRC's Public Document Room in Washington, D.C., and does not seek a search for those documents. Rather, the purpose of this request is to obtain access to any other documents that may be in the possession of the NRC Staff but have not been sent to the Public Document Room.

Pursuant to NRC regulations at 10 C.F.R. § 9.39(a), we request that any searching and copying fees incurred as a result of this request be waived, on the ground that NACE constitutes a "representative of the news media." See National Securities Archives v. Department of Defense, 880 F.2d 1381 (D.C. Cir. 1989). Native Americans for a Clean Environment is a non-profit, tax-exempt organization that was formed for the purpose of raising public consciousness about environmental issues, with emphasis on the nuclear industry. The organization publishes a monthly newsletter, "NACE News," that reports to about 1,000 readers on environmental issues affecting Native Americans. For many years, NACE

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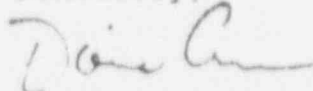
Donnie H. Grimsley, Director  
February 27, 1991  
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NACE has reported on the risks to public health and the environment posed by the Sequoyah Fuels Corporation's Gore, Oklahoma facility. The plant's license is now up for renewal. However, renewal of the license has been placed in jeopardy by the discovery of serious contamination of the soil and groundwater under the plant. NACE intends to closely follow, and report on in its newsletter, developments related to enforcement and licensing actions taken by NRC with respect to the SFC plant.

If for any reason you decide to deny this fee waiver request, please contact me before incurring any charges on behalf of NACE.

I look forward to receiving your response within ten working days of receipt of this request, as required by the Freedom of Information Act.

Sincerely,



Diane Curran  
Counsel to Native Americans  
for a Clean Environment

cc: Lance Hughes,  
Acting Director, NACE