



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

SEP 28 1984

Mark J. Wetterhahn, Esquire  
Conner & Wetterhahn, P.C.  
1747 Pennsylvania, Avenue, NW  
Washington, D.C. 20006

IN RESPONSE REFER  
TO FOIA-84-600

Dear Mr. Wetterhahn:

This is in response to your letter dated July 19, 1984, in which you requested, pursuant to the Freedom of Information Act, seven categories of documents regarding Inspection Report 50-358/84-04, and your September 14, 1984 letter in which you requested information concerning NRC policy regarding the destruction of documents.

At the conclusion of an August 17, 1984, conference call between:

- Mr. Robert Rader of your staff,
- Mr. Stephen Isaacs of the NRC FOIA staff, and
- Mr. Robert Warnick of NRC Region III staff,

we agreed to telefax to Mr. Rader a list of all the currently known documents, together with an April 25, 1984, memorandum from T. P. Gwynn, Senior Resident Inspector at Zimmer, to W. L. Forney, attaching a draft "Welding Status Summary Report" related to the Zimmer Nuclear Power Station. A copy of the draft report was not available and, therefore, could not be sent in the telefax package. During the conversation, Mr. Warnick stated emphatically that he was unable to locate any copies of the report because the policy of his office was to destroy draft copies as soon as they were no longer necessary. Mr. Rader requested that Mr. Warnick initiate a second search effort to locate a copy of the report. Mr. Warnick informed Mr. Isaacs by telephone on September 9, 1984, that no copies of the draft welding report had been located.

In order for you to better understand the NRC agency-wide policy of destroying non-record documents, we have enclosed a March 12, 1984, letter to Ms. Billie P. Garde, of the Government Accountability Project (GAP), which addresses the NRC document destruction policy.

This completes action on your request.

Sincerely,

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

Enclosure: As stated

8503010023 840928  
PDR FOIA  
WETTERH84-600 PDR

TIME REQUESTED  
84 OCT -4 10:39  
PUBLIC DOCUMENT ROOM



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

March 12, 1984

Ms. Billie Pirner Garde  
Government Accountability Project  
Institute for Policy Studies  
1901 Q Street, N.W.,  
Washington, D.C. 20009

Dear Ms. Garde:

I have received your letter to the Commissioners of February 7 in which you expressed your concern that the regional offices do not understand NRC policy on destruction of documents supporting inspection findings. You requested information concerning NRC policy on destruction of documents, the status of the OIA investigation of the Kent case in Region V, and the destruction of documents in a matter involving the Catawba nuclear plant in Region II.

NRC policy concerning inspection documents is contained in IE Manual Chapter OF10. This Manual Chapter is available in the NRC Public Document Room. Inspection reports are to be self-contained documents which provide the necessary and relevant information to support regulatory decisions.

We are well aware of the various statutory requirements which you cite concerning the retention of documents. They do not require the retention of personal notes and other non-record documents. Drafts and notes are aids to assist the writer in preparation of the reports. There is no prohibition against destroying such materials after necessary information has been transferred to the report. In fact, personal notes are not considered agency records provided they have not been circulated to others, have not been commingled with agency records, and may be retained or destroyed at the discretion of the originator. Porter County Chapter of the Izaak Walton League v. AEC, 380 F. Supp. 630, 663 (N.D. Ind. 1974). The exercise of this discretion does not present an organizational problem involving the NRC FOIA office as you suggest. Quite to the contrary, it reflects an NRC agency-wide policy in regard to inspection reports.

With respect to the Region II matter, the notes you inquired about were destroyed after the necessary information had been transferred to the inspection reports. There was nothing unusual about this and it was consistent with NRC policy. In any event, the notes were destroyed prior to the receipt of the FOIA requests. Even if they had not been destroyed at that time, they still would not have been available under the FOIA because they would not have been agency records.

As to the discovery issue, the Licensing Board had denied a recent motion to reopen discovery. The staff, while making every effort to comply with an informal oral discovery request, was under no obligation to do so. We do not believe that the staff's action was improper because the notes were destroyed prior to notification of the discovery requests and because such notes are not, in any event, agency records.

8405160110

Any implication that staff members acted improperly, in either of those matters is not warranted.

In regard to the DIA investigation of the Kent case in Region V, which also dealt with destruction of notes, the report should be before the Commission in about a month.

Sincerely,

(Signed) T. A. Rehm

T. A. Rehm, Assistant for Operations  
Office of the Executive Director  
for Operations

cc: Congressman Edward J. Markey

Distribution

- EDO R/F
- WDircks
- JRoe
- TRehm
- VStello
- GCunningham
- JLieberman
- PHorry
- RDeYoung
- JMartin, RV
- JO'Reilly, RII
- SECY-84-0151
- MBridgers (EDO-14113)

\*SEE PREVIOUS CONCURRENCE SHEET

FF	AO/EDO	: ELD*	: OIA			
AJ	AREhm	: JMurray	: GMessenger			
ATE	: 03/9/84	: 3/7/84	: 03/8/84			

*Tele. and  
concurrent  
4/8/84  
from A. Fortuna*