

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST**

2000-0014

6

RESPONSE  
TYPE☐

FINAL

☒

PARTIAL

REQUESTER

Maria Webb

DATE

MAY 19 2000

**PART I. -- INFORMATION RELEASED**

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☐ APPENDICES  
Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☒ APPENDICES  
**H**  
Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ 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, NW, Washington, DC.
- ☒ APPENDICES  
**H & I**  
Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☐ See Comments.

**PART I.A -- FEES**

AMOUNT \*

\$

☐

You will be billed by NRC for the amount listed.

☐

None. Minimum fee threshold not met.

☐

You will receive a refund for the amount listed.

☐

Fees waived.

\* See comments  
for details**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

**PART I.C COMMENTS (Use attached Comments continuation page if required)**

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

**RESPONSE TO FREEDOM OF INFORMATION  
ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

2000-0014

MAY 19 2000

**PART II.A -- APPLICABLE EXEMPTIONS****APPENDICES  
I & J**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
- ☐ 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).
- ☐ 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be confidential business (proprietary) information.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☐ 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)
- ☒ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☐ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would 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).
- ☐ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) 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 person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
James E. Dyer	Regional Administrator, Region III	Appendices I and J	<input checked="" type="checkbox"/>		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX H**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**  
**(If copyrighted identify with \*)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	12/07/98	E-mail from Susan Chidakel, OGC, to H. Brent Clayton, Region III, subject: Re: Request for OGC Assistance. (1 page)
2.	03/03/99	E-mail from S. Chidakel, OGC, to Charles Weil, RIII, subject: Your Question Yesterday. (1 page)
3.	03/03/99	E-mail from S. Chidakel to C. Weil, subject: Your Question Yesterday. (1 page)
4.	03/04/99	E-mail from C. Weil, RIII, to J. Lieberman & Mike Stein, OE, subject: Release of Morrison Knudsen Material OEmail. (1 page)
5.	03/10/99	E-mail from C. Weil, RIII, to B. Berson, H. Clayton and J. Gavula, RIII, subject: Morrison Knudsen (EA 98-081)
6.	03/10/99	Memo from C. Weil to Enforcement File, subject: Telephone Call from the Complainant in the Morrison Knudsen Case. (1 page)
7.	03/12/99	E-mail from C. Weil to J. Gavula, J. Hopkins, J. Grobe, subject: Morrison Knudsen (EA 98-081). (1 page)
8.	03/16/99	Memo from C. Weil to Enforcement File, subject: Release of Information Provided Subsequent to the Predecisional Enforcement Conference. (1 page)
9.	03/18/99	E-mail from C. Weil to B. Berson, M. Stein & Richard Paul, subject: Letter to MK Complainant. (1 page)
10.	03/18/99	E-mail from C. Weil to B. Berson, M. Stein & R. Paul, subject: Release of Material to Complainant in Morrison Knudsen Case. (1 page)
11.	08/12/99	E-mail from S. Chidakel, OGC, to B. Berson, Region III, C. Weil, Region III, and M. Stein OE, subject: Re: Morrison

Knudsen. (1 page) (11 pages)

12. 08/17/99 E-mail from M. Stein, OE, to Brent Clayton, Bruce Berson, and Charles Weil, Region III, subject: MK Order, attaching draft order with handwritten notes. (11 pages)
13. 08/23/99 E-mail from M. Stein, OE, to J. Monninger, NRR, subject: MK Order, with attached draft order with handwritten notes. (10 pages)
14. 08/25/99 E-mail from Melanie Galloway, NMSS, to Charles Emeigh, Charles Cox, and Yawar Fakaz, NMSS, subject: Activities of Morrison-Knudsen at FCSS facilities. (1 page)
15. 08/25/99 E-mail from Yawar Faraz to John Monninger, NMSS, subject: NMSS Interfaces with Morrison-Knudsen. (1 page)
16. 08/25/99 E-mail from c. Cox to John Monninger, subject: NMSS Interfaces with Morrison-Knudsen. (1 page)
17. 08/25/99 E-mail from Charles Cox to John Monniger, subject: Fwd: NMSS Interfaces with Morrison Knudsen. (1 page)
18. 08/25/99 E-mail from John Greeves, NMSS, to Aby Mohseni, NMSS, and John Monninger, NRR, subject: NMSS Interfaces with Morrison Knudsen. (1 page)
19. 08/25/99 E-mail from Aby Mohseni, NMSS, to Donald Cool, E. William Brach, and Elizabeth Ten Eyc, NMSS, subject: NMSS Interfaces with Morrison Knudsen. (1 page)
20. 08/25/99 E-mail from John Monniger, NRR, to Aby Mohseni, NMSS, subject: NMSS Interfaces with Morrison Knudsen. (1 page)
21. 08/25/99 E-mail from Aby Mohseni to Donald Cool, E. William Brach, and Elizabeth Ten Eyc, NMSS, subject: NMSS Interfaces with Morrison Knudsen. (1 page)
22. 08/26/99 E-mail from E. William Brach to Aby Mohseni, NMSS, subject: Westinghouse Part 71 Certificates. (1 page)
23. 08/26/99 E-mail from Ross Chappell to E. William Brach and Patricia Eng, NMSS, subject: Westinghouse Part 71 Certificates. (1 page)
24. 08/30/99 E-mail from T. Sherr to Charles Emeigh, Elizabeth Ten Eyck,

subject: NMSS Interfaces with Morrison Knudsen. (1 page)

- 25. 08/30/99 E-mail from D. Cool to Aby Mohseni, subject: NMSS Interfaces with Morrison Knudsen. (2 pages)
- 26. 08/30/99 E-mail from Aby Mohseni to John Monninger, subject: NMSS Interfaces with Morrison Knudsen, with attached e-mails. (3 pages)
- 27. 03/01/99 E-mail from Charles Weil to B. Clayton, J. Caldwell, and J. Gavula, RIII, subject: Morrison Knudsen Employment Discrimination Case (EA 98-081). (1 page)
- 28. 03/01/99 E-mail from B. Berson, RIII, to M. Stein, OE, subject: MK Assessment. (1 page)

**APPENDIX I**  
**RECORDS BEING WITHHELD IN PART**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1.	12/28/98	Fax sheet from S. Chidakel to C. Weil, (1 page), <b>released</b> , with attached Discussion Topics for Morrison-Knudsen Predecisional Enforcement Conference. (1 page) <b>EX. 5 - ATTORNEY CLIENT</b>
2.	03/12/99	E-mail from Bruce Berson to Charles Weil, RIII, subject: Morrison Knudsen (EA 98-081). (1 page) <b>EX. 5- ATTORNEY CLIENT</b>
3.	Undated	Home addresses and telephone numbers of individual. (1 page) <b>EX. 6</b>

**APPENDIX J**  
**RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	2/24/99	E-mail from S. Chidakel, OGC, to Brent Clayton, RIII, subject: MK's Assertions of inconsistencies, with attached 2/19/99 e-mail from S. Chidakel to Bruce Berson and Mike Stein, and 2/19/99 e-mail from M. Stein to B. Berson and S. Chidakel. (3 pages) <b>EX. 5, ATTORNEY-CLIENT</b>
2.	03/01/99	E-mail from M. Stein, OE, to Bruce Berson, RIII, subject: MK Assessment, with attached Preliminary MK H&I Case Assessment. (4 pages) <b>EX. 5, ATTORNEY-CLIENT</b>

From: Susan Chidakel -OC  
To: H. Brent Clayton H/1  
Date: Mon, Dec 7, 1998 3:01 PM  
Subject: Re: Request for OGC Assistance

Thanks for cc'ing me. I agree that this is a good approach, and am available and flexible that week from Monday on. My preference would be to return to headquarters by Thursday evening if possible. I look forward to the visit to Region III and hope my attendance will be an asset.

>>> H. Brent Clayton 12/07 3:50 PM >>>

OK. Thanks for the help. Bruce Berson or Chuck Weil will be in contact with Susan to finalize dates and other arrangements.

---Brent

>>> Jack Goldberg 12/07 2:37 PM >>>

The agency is encouraging the use of video conferencing, which I believe has worked well in other complex enforcement cases. I would prefer its use in this one too rather than send Susan and have her unavailable here for the better part (or almost all) of a week, travel time included. Bruce is intimately familiar with the case and I have discussed it in general terms with Bruce (as well as in more detail with Susan). Ordinarily the regional counsel's personal attendance is sufficient. Nevertheless, I propose that you schedule a conference with the individuals for an afternoon and M-K for the next morning. Pre-and post-conference caucusing can be done by phone. This would allow Susan to travel the morning of the conference with the individuals, stay overnight for the M-K conference the next day, and return to HQ that second day. This should be a satisfactory compromise. If so, the regional people can coordinate directly with Susan.

>>> H. Brent Clayton 12/03 5:17 PM >>>

Jack, we are scheduling enforcement conferences for an unusually complex discrimination case with Morrison-Knudsen. We would appreciate Susan Chidakel's participation in the conferences. Her review of the background material has been helpful to date and we feel that her questions and assessment of the responses during the conferences will help us make the right decisions.

We anticipate conferences with two individuals and the company, and we're trying to schedule them for an afternoon and the following morning in mid to late January. Because of the complexity of the case, video conferencing is not considered practical. Also, it is not desirable to video the conferences with the individuals. Please let me know if other OGC priorities will preclude Susan from coming out to assist us. Otherwise, Chuck Weil of my staff will work with her to arrange a mutually agreeable schedule.

---Brent

CC: Bruce Berson, C. H. Weil, Michael Stein

H/1  
~~6/1~~



**From:** Susan Chidakel *SC*  
**To:** Charles H. Weil *CHW*  
**Date:** Wed, Mar 3, 1999 8:33 AM  
**Subject:** YOUR QUESTION YESTERDAY

Yesterday you asked my view as to whether we should release MK's submittal to A. This is just to let you know that Jack has not yet formed an opinion and has asked me to do some further checking. Please hold off until we get back. Thanks.

**CC:** BAB1, MHS

*H/2*

**From:** Susan Chidakel *SC*  
**To:** Charles H. Weil *CHW*  
**Date:** Wed, Mar 3, 1999 9:57 AM  
**Subject:** YOUR QUESTION YESTERDAY

Jack and I agree that you should send MK's submittal to A.

**CC:** Bruce Berson, Michael Stein

H/3

**From:** Charles H. Weil *RTI*  
**To:** James Lieberman, Michael Stein *OE*  
**Date:** Thu, Mar 4, 1999 12:44 PM  
**Subject:** RELEASE OF MORRISON KNUDSEN MATERIAL  
**Place:** OEMAIL

This morning I spoke to Rich Paul, OI:RIII, about releasing to the complainant the additional material about him submitted by Morrison Knudsen after the conference. Rich did not have an objection to releasing the material if agreed by OE. As previously reported, OGC does not object to releasing. Need your decision soonest to that I can tell complainant whether, or not, his requested material will be sent to him. Chuck

**CC:** H. Brent Clayton, OEMAIL, Richard Paul

*H/34*

**From:** Charles H. Weil *CHW*  
**To:** Bruce Berson, H. Brent Clayton, James Gavula, J... *CHW*  
**Date:** Wed, Mar 10, 1999 4:32 PM  
**Subject:** MORRISON KNUDSEN (EA 98-081)  
**Place:** OEMAIL

The attached memo documents a contact with the complainant in the Morrison Knudsen case. The individual gave a tentative schedule for delivery of his comments about the enforcement conference transcript. Also, he again asked about obtaining the material about him that Morrison Knudsen provided after the conference.

I've spoken to Mike Stein and Jim Lieberman. OE presents a concern about releasing the information due to the possibility of an allegation of false information provided to DOL. Mike Stein suggested that I talk to Bruce Berson about this issue. (Bruce is out of the office until 3/11/99, and I'll talk to Bruce). I've also spoken to Susan, and OGC does not have an objection to releasing the material.

However, the bottom line is that we must make a decision and inform the complainant ASAP. Regardless of the decision, we'll need to formulate a cover letter, and I'll probably need help in developing that letter if we're not releasing the material.

Do we need a conference call to make a final decision about releasing the information?

Chuck

CC: OEMAIL

4/5

March 10, 1999

EA 98-081

NOTE TO: Enforcement File

FROM: Charles H. Weil, Enforcement Specialist

SUBJECT: TELEPHONE CALL FROM THE COMPLAINANT IN THE MORRISON  
KNUDSEN CASE

I opened my "voice mail" this morning, after being away from the office of several days, and there was a message from the complainant in the Morrison Knudsen employment discrimination case. He had two points:

1. He gave the following tentative schedule for his response to his review of the enforcement conference transcript.

3/9/99, sent his review to his attorney by "overnight mail,"  
3/11/99, expected date of receipt by his attorney, and  
Mid-week 3/15/99, attorney will have review finished.  
[Estimated receipt by NRC will probable be 3/22/99, Weil]

2. He also inquired about the additional information that MK provided about him following the conference, and requested that his wife be called and given the status.

On March 10, 1999, I spoke with his wife. I told her that I had been off for several days and did not know the current status about the release of that information. However, to my knowledge we were reviewing the content of that information for release.

CONTACT: Charles H. Weil  
(630) 810-4372

A/6

**From:** Charles H. Weil *CHW*  
**To:** James Gavula, Jay Hopkins, John Grobe, Richard ... *CHW*  
**Date:** Fri, Mar 12, 1999 10:16 AM  
**Subject:** Fwd: Re: MORRISON KNUDSEN (EA 98-081)

Jim/Jay/Roger/Rich

The attached is for your action. Chuck

**CC:** Bruce Berson, H. Brent Clayton, Michael Stein, ...

4/7

March 16, 1999

EA 98-081

NOTE TO: Enforcement File

FROM: Charles H. Weil, Enforcement Specialist 

SUBJECT: RELEASE OF INFORMATION PROVIDED SUBSEQUENT TO THE  
PREDECISIONAL ENFORCEMENT CONFERENCE

During the transcribed predecisional enforcement conference with the Morrison Knudsen (MK) on January 27, 1999, MK offered to provide additional information about the complainant in the apparent employment discrimination case. This information was purported to show inconsistencies in the complainant's testimony to DOL and MK investigators.

IAW Section V of the NRC Enforcement Policy, a copy of the transcript of the predecisional enforcement conference with MK was provided to the complainant for comment. Subsequent to reviewing that transcript, the complainant asked for a copy of the information about him that MK subsequently provided to the NRC.

The question about releasing this information to the complainant eventually reached Ed Baker, NRC Agency Allegation Advisor, through the Office of Enforcement (OE). The release of this information was discussed with Baker on March 16, 1999. It was Baker's opinion that OE should be responsible for the determination to release, not release, the information to the complainant. However, it was Baker's opinion that in order to achieve a full and complete understanding of the information presented at the PEC and subsequent to the PEC, that all information should be released to the complainant for review and comment.

Contact: Charles H. Weil  
(630) 810-4372

Hlf

From: Charles Weil <sup>RHI</sup><sub>WT</sub>  
To: Bruce Berson, Michael Stein, Richard Paul <sup>OE</sup><sub>OT</sub>  
Date: Thu, Mar 18, 1999 3:17 PM  
Subject: LETTER TO MK COMPLAINANT  
Place: OEMAIL

Earlier this afternoon I sent you an "e-mail" with a draft letter to the MK complainant attached to that e-mail and asked for your review and comments. Within the last hour I've talked to the complainant and had to make a slight alteration to the original draft. Please disregard FILE: G:\EICS\98-081.COM and use the attached, G:\EICS\98-081.CO2.

Sorry for any inconvenience, but you now have the latest and greatest. Chuck

CC: Brent Clayton, OEMAIL

#19



**From:** Charles Weil  
**To:** Bruce Berson, Michael Stein, Richard Paul  
**Date:** Thu, Mar 18, 1999 1:49 PM  
**Subject:** RELEASE OF MATERIAL TO COMPLAINANT IN MORRISON KNUDSEN CASE (EA 98-081)  
**Place:** OEMAIL

As we have previously discussed, the complainant in the Morrison Knudsen (MK) employment discrimination case (EA 98-081) has asked for information that MK provided after the enforcement conference. Purportedly, this is false/misleading information the complainant may have provided during the Department of Labor hearing.

You asked that NRC Agency Allegation Advisor Ed Baker be consulted about releasing the information to the complainant. Ed is in the Region III office today and I discussed the issue with him. Essentially, it was Ed's opinion that the information appears to involve DOL and not an allegation of a potential violation of NRC requirements. Baker recommended:

1. Sending the information to DOL, and
2. Releasing the information to the complainant as he requested.

As you know, Susan Chidakel, OGC, recommended the same course of action.

Bill Borchardt and I talked about this on the afternoon of March 18, 1999, and decided to proceed as suggested above.

I've prepared a letter transmitting the information to the complainant and am forwarding it for your review. Copies of the draft are also being sent to Rich Paul, Ol:RIII, and Bruce Berson, Regional Counsel, for their review.

Bruce/Mike/Rich, Please give me your comments ASAP. Thanks

Chuck

**CC:** OEMAIL

H/10

From: Susan Chidakel  
To: Bruce Berson, Charles Weil, Michael Stein  
Date: Thu, Aug 12, 1999 2:19 PM  
Subject: Re: MORRISON KNUDSEN (EA 98-081; EA 98-540; EA 98-541)

*Handwritten: OOC, leg III, OE*

I have no comments except for a typo in the second line of the last paragraph - should read "was provided to you by letter," not "be" letter.

>>> Charles Weil 08/10 4:40 PM >>>

Mike Stein, OE, is in the process of drafting a confirmatory order to Morrison Knudsen (EA 98-081). It is my understanding that we would not be taking enforcement action against either of the individuals involved, so I drafted the attached closeout letters. Please review and send me your comments. The letters to the individuals will be released the same day that the confirmatory order is sent to MK. Chuck

*Handwritten: H/11*  
*Handwritten: [scribble]*

From: Michael Stein *OE*  
To: Brent Clayton, Bruce Berson, Charles Weil, Susa...  
Date: Tue, Aug 17, 1999 1:15 PM  
Subject: MK Order

*Region III*

I have put together the draft MK Order attached and have included SGT, Inc. We currently have both MK and SGT's waiver of a hearing on file. Please begin your review of the attached confirmatory order and send me comments. MK and SGT has agreed to the conditions specified in this order.

Vonna, I am not sure who in NRR needs to review this document. We do need NRR concurrence from your front office.

Thanks.

Mike

CC: Dennis Dambly, Richard Borchardt

*ask Leebman*  
★ Find out ~~what~~ what happens if they don't comply w/ order  
→ Mike sign did H/K now  
→ 1st license

★ Verify how the region tracks this FTE-wise.

when vendor messes up we go after the licensee.

Will be tracked under EATS (EA No.) Region III will have this maybe?

Bill - do we concure? Yes  
H/12

*Region usually  
drafts them  
but Mike  
SG, clear out  
w/holding*

EA 98-081

Mr. Thomas H. Zarges  
President and CEO  
Morrison Knudsen Corporation  
MK Ferguson Plaza  
1500 West Third Street  
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER AND EXERCISE OF DISCRETION

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) in order to confirm the commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent as exhibited in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, Inc. has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

For clarification of the requirements as set forth in Section V of the Order, MK is to submit to the Regional Administrator, Region III, only the materials requested in the enclosed Confirmatory Order, Section V.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Bill Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia  
Deputy Executive Director  
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.

In the Matter of

Morrison Knudsen

SGT, Inc.

CONFIRMATORY ORDER  
(EFFECTIVE IMMEDIATELY)

EA 98-081

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple licensee sites. MK headquarters is located in Cleveland, Ohio. SGT, Inc. is an affiliated corporation involved in the Steam Generator replacement projects for MK.

## II

NRC Office of Investigations (OI) Report No. 3-97-013 concluded that discrimination occurred when MK removed the Group Welding Engineer (GWE) on January 15, 1997 and subsequently transferred him following the GWE's documentation of safety concerns on January 14, 1997. In addition, a Department of Labor (DOL) Administrative Law Judge (ALJ), on October 28, 1997, also determined after an evidentiary hearing, in 97-ERA-34, that discrimination was a factor in the removal and transfer of the GWE. The ALJ's finding was remanded to the ALJ by a DOL Administrative Review Board on May 1, 1998 based upon a Joint Motion for Settlement Approval. The ALJ issued his decision and order approving the settlement and dismissing the complaint with prejudice on May 21, 1998.

The NRC staff invited MK to a predecisional enforcement conference (PEC) to discuss the apparent violation, which was fully detailed in correspondence with MK on March 25, 1998. An independent investigation was performed for MK by the law firm Stier, Anderson and Malone and the report and supporting materials was submitted to the NRC for review. A PEC was held with MK on January 27, 1999. By letter dated April 22, 1999, MK submitted additional

*Callie  
SGT, Inc.  
Employee went to DOL  
for ALJ hearing  
that there was discrimination  
Did not go to address  
the problem  
wrote a  
letter  
to the  
NRC  
on  
April  
22, 1999*

information for consideration by the NRC staff. The April 22, 1999, letter was in response to the GWE's letter and comments on the PEC dated March 25, 1999.

MK maintains that no violation of 10 CFR 50.7 occurred in connection with the removal and transfer of the former MK GWE. MK has stated that the removal of the GWE, and his transfer to its West Virginia job site, were legitimately based on the GWE's job performance, and were not based upon the GWE raising nuclear safety concerns. The NRC's Office of Investigations (OI) concluded that discrimination was a factor in the adverse actions taken against the GWE. The NRC staff believes that MK management discriminated against the GWE as a result of the GWE preparing a Quality Finding Report (QFR) which identified a number of deficiencies in the MK Point Beach welding program. The QFR was prepared by the GWE at the request of his supervisor following an independent audit by the Hartford Steam Boiler Company, which also identified several deficiencies in MK's welding program. The NRC staff believes that as a result of the submittal of the QFR, the GWE was removed from his position and transferred to an MK West Virginia job site.

### III

MK and SGT has planned various additional actions to assess the work environment at its corporate headquarters and temporary job sites. Specifically, MK and SGT, Inc. plan: (1) to conduct a comprehensive cultural assessment to be performed by an independent consultant and the results of such an assessment will be utilized by MK and SGT, Inc. in improving its employee concerns program, and (2) mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in dealing with employees who raise safety concerns in the workplace. MK and SGT, Inc. agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to

the raising of safety concerns by employees. It was agreed that such training would be conducted by an independent trainer, i.e. non-MK or SGT, Inc. employee, with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, Inc. also plan to take the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: ~~(1) posting this confirmatory order and employee whistleblower protection rights under the Energy Reorganization Act, as amended, at all MK and SGT, Inc. temporary job sites and at the MK corporate headquarters in Cleveland, Ohio;~~ (2) implementation of the recommendations to improve the MK and SGT, Inc. employee concerns program as stated in the independent third party assessment; (3) periodic update of an employee cultural survey to ensure that MK and SGT, Inc. employees feel free to raise safety concerns without fear of retaliation; and (4) the expansion of the MK and SGT, Inc. exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT, Inc.

#### IV

Since MK reached a DOL settlement with the GWE on or about May 21, 1998; since MK has taken the corrective actions as outlined above; and since MK and SGT, Inc. has plans to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff is satisfied that its concerns regarding employee protection at MK corporate headquarters and MK and SGT, Inc. temporary job sites can be resolved through confirmation of MK and SGT, Inc. plans as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT, Inc. consented to issuance of this Order with the commitments described in Section V, below. By letter dated August 9, 1999, MK and SGT, Inc. consented to waive its right to a hearing on this Order. MK and SGT, Inc. further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT, Inc. commitments, as set forth in Section V, below, are acceptable and necessary and conclude that with these commitments, MK and SGT, Inc. process for addressing employee protection and safety concerns will be enhanced. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT, Inc. consent, this Order is immediately effective upon issuance.

#### V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. Section 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT MORRISON KNUDSEN AND SGT, INC. SHALL DO THE FOLLOWING:

Beginning in November, 1999, MK and SGT, Inc. will integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment, as described in the NRC's letter to Mr. Patrick Hickey dated July 9, 1999. This includes the following:



1. MK and SGT, Inc. agree to ~~hire an independent consultant to conduct audits, to review the~~ MK and SGT, Inc. ~~Employees Concerns Program (ECP), and to conduct training for MK and~~ SGT supervisors and managers as discussed below in condition #2. MK and SGT will ~~hire this~~ independent consultant with experience in ECPs to also conduct an independent evaluation of MK's and SGT's entire ECP to be completed by January, 2000. MK and SGT shall inform the NRC as to the identity of its independent consultant. MK and SGT shall either implement the recommendations outlined by the consultant to ensure a safety conscious work environment exists at MK and SGT, Inc. job sites or explain to the NRC why it cannot implement such recommendations outlined by the consultant. MK and SGT, Inc. shall share these recommendations with the NRC.

2. MK and SGT will conduct mandatory continuing training programs on an annual basis for all MK and SGT, Inc. supervisors and managers. All temporary craft and permanent MK and SGT, Inc. employees should receive initial employee protection training as part of their access program or initial orientation when they begin work at an MK or SGT, Inc. job site. The independent consultant, as outlined in condition #1 above, will approve this training. The training program for supervisors and managers should be conducted by an independent trainer as approved by the independent consultant, if the consultant does not conduct such training, and include:

(A) Annual training on the requirements of 10 CFR 50.7, ~~through at least the year 2002~~, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(B) Scheduled training on building positive relationships and conflict resolution. The training program will have the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in

the work place in the context of a Safety Conscious Work Environment at MK and SGT, Inc. and at its temporary job sites.

3. ~~MK and SGT, Inc. shall, beginning in November, 1999, integrate into its overall program for enhancing the work environment and safety culture at its corporate headquarters and temporary job sites a cultural assessment survey, i.e. questionnaire, developed by the experienced independent consultant.~~ MK and SGT, Inc. also agree to conduct at least three additional annual assessments. These audits should be geared toward ensuring that employees are aware of the provisions of 10 CFR 50.7, are willing to come forward and report safety concerns when appropriate, and know how to implement the ECP, e.g. that the existence of the safety concerns hotline is well known to all employees. MK and SGT, Inc. also agree to conduct audits at its temporary job sites soon after the initial staffing of the sites and periodically afterward as warranted. Lastly, MK and SGT, Inc. also agree to expand its exit survey to include safety conscious work environment issues and to conduct exit surveys of its permanent corporate employees and contract employees so as to assure itself that all employees feel free to raise safety concerns without fear of retaliation. The questionnaires, audits, surveys and the resulting analysis reports of these ECP documents will be submitted to the NRC for review for a period of three years from the date of the Order. MK and SGT, Inc. shall provide to the NRC information pertaining to any later actions to address issues raised by the survey and audit results.

4. ~~Following the issuance of the Confirmatory Order, MK and SGT, Inc. will issue company-wide publications to inform all of its employees of this Confirmatory Order, as well as employee rights to raise safety concerns to the companies and to the NRC without fear of retaliation.~~ These publications shall also be posted at all temporary job sites and at the companies' corporate headquarters.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by MK of good cause.

## VI

Any person adversely affected by this Confirmatory Order, other than the above mentioned contractors, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to the contractors. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Frank Miraglia  
Deputy Executive Director  
For Reactor Programs

Dated at Rockville, Maryland  
this        Day of August, 1999

Distribution

FMiraglia, DEDR  
BBorchardt, OE  
JDyer, RIII  
BClayton, RIII  
SCollins, NRR  
DDambly, OGC  
EA File

Concurrence Blocks:

Myself  
NRR  
OGC-DDambly  
RIII- JDyer  
OE-BBorchardt  
DEDR-FMiraglia

**G: MKORD.WPD**

**From:** Michael Stein *OE*  
**To:** John Monninger *NRR*  
**Date:** Mon, Aug 23, 1999 4:09 PM  
**Subject:** Fwd: Re:MK Order

John,

Attached is my redraft of the MK Order for NRR concurrence. I understand that Vonna has discussed this with Bill Kane and Sam Collins. Thanks.

Mike

**CC:** Richard Borchardt

H/13



EA 98-081

Mr. Thomas H. Zarges  
President and CEO  
Morrison Knudsen Corporation  
MK Ferguson Plaza  
1500 West Third Street  
Cleveland, OH 44113-1406

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Zarges:

The enclosed Confirmatory Order is being issued to Morrison Knudsen (MK) and its affiliate, SGT, LLC, in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that MK's process for addressing employee protection and safety concerns will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Patrick Hickey's letter dated July 23, 1999, the NRC staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated August 9, 1999, MK and SGT, LLC, has consented to the issuance of the Confirmatory Order and waived its right to request a hearing on all or any part of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Mr. R. W. Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Frank Miraglia  
Deputy Executive Director  
For Reactor Programs

Enclosure: Confirmatory Order (Effective Immediately)

cc w/enclosure: Patrick Hickey, Esq.  
M. Reddemann, Site Vice President  
Point Beach Nuclear Plant

In the Matter of  
Morrison Knudsen

)  
)  
)  
SGT, LLC

EA 98-081

*- Case closed  
re: Morrison Knudsen  
NRCSS concerns*  
*M/K*  
*BWFL*  
*Other Orders  
to vendors*  
*NRCSS*

CONFIRMATORY ORDER  
(EFFECTIVE IMMEDIATELY)

I

Morrison Knudsen (MK) is a construction engineering firm with operation at multiple facilities licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission). MK headquarters is located in Cleveland, Ohio. SGT, LLC (SGT) is an affiliate of MK involved in the steam generator replacement projects for MK.

II

On March 13, 1997, the NRC Office of Investigations (OI) initiated an investigation to determine if the former Corporate Group Welding Engineer (GWE) for MK had been discriminated against for raising safety concerns. In its report issued on February 6, 1998 (OI Case No. 3-97-013), OI concluded that there was sufficient evidence to substantiate that discrimination occurred. Specifically, OI concluded that the GWE's identification of deficiencies in welding procedures at the Point Beach Nuclear Plant was at least a contributing factor in MK's decision to remove him from his position as GWE on January 15, 1997. In addition, in a decision issued on October 28, 1997, a Department of Labor (DOL) Administrative Law Judge (ALJ), in DOL Case No. 97-ERA-34, determined that the removal of the GWE was in retaliation for his engaging in protected activity. Subsequently, on May 21, 1998, the ALJ approved a settlement agreement between the GWE and MK.

On January 27, 1999, a predecisional enforcement conference was held between MK and the NRC staff to discuss the apparent violation of the employee protection requirements of the NRC regulations. MK retained the services of a law firm to perform an independent investigation.



MK submitted the report of this investigation and additional materials to the NRC for review in support of its position that the removal of the GWE was based upon legitimate performance considerations and not upon the GWE having engaged in protected activity.

### III

MK, and its affiliate SGT, have agreed to take certain actions to assess the work environment at their corporate headquarters and temporary job sites. Specifically, MK and SGT have committed to conduct a comprehensive cultural assessment to be performed by an independent consultant and to utilize the results of such an assessment to improve their employee concerns program and to implement a mandatory continuing training programs for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety conscious work environment and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. MK and SGT agreed to include in such training the requirements of 10 CFR 50.7, including, but not limited to, the definition of protected activity and discrimination, and appropriate responses to the raising of safety concerns by employees. MK and SGT also agreed that such training will be conducted by an independent trainer with expertise in employee concerns programs and employee protection requirements in the nuclear industry.

In addition, MK and SGT, also also have committed to taking the following corrective action to ensure that employees feel free to raise safety concerns without fear of retaliation: (1) posting this Confirmatory Order and employee protection under the Energy Reorganization Act, as amended, Section 211, and NRC Form 3, at all MK and SGT temporary job sites and at the MK corporate headquarters in Cleveland, Ohio; (2) implementation of the recommendations to improve the MK and SGT, Inc. employee concerns program as stated in the independent third party assessment; (3) periodic updates of an employee cultural survey developed by an independent contractor to ensure that MK and SGT employees feel free to raise safety

concerns without fear of retaliation; and (4) the expansion of the current MK and SGT exit surveys to include safety conscious work environment issues and to conduct such surveys among its permanent and contract employees to assure itself that such employees felt free to raise safety concerns while employed by MK or SGT.

#### IV

Since MK and SGT have committed to taking the corrective actions as outlined above, and since MK and SGT have committed to monitor the safety conscious work environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation by implementing this Confirmatory Order, the NRC staff has determined that its concerns regarding employee protection at MK corporate headquarters and MK and SGT temporary job sites can be resolved through confirmation of MK and SGT commitments as outlined in this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not issue a Notice of Violation or a civil penalty in this case.

By letter dated July 9, 1999, MK and SGT consented to issuance of this Order with the commitments described in Section V below. By letter dated August 9, 1999, MK and SGT consented to waive any right to a hearing on this Order. MK and SGT further consented to the Immediate Effectiveness of this Order.

I find that MK and SGT's commitments, as set forth in Section V below, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured and that the employee protection programs will be enhanced. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and MK and SGT's consent, this Order is immediately effective upon issuance.

Boilerplate

US, the <sup>WPC</sup> staff everywhere else

Distribution  
NUDOCS  
PDR  
SECY  
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WTravers, EDO  
FMiraglia, DEDR  
BBorchardt, OE  
JDyer, RIII  
BClayton, RIII  
SCollins, NRR  
DDambly, OGC  
Enforcement Coordinators  
RI, RII, RIV  
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GCaputo, OI  
HBell, OIG  
EA File

OE	NRR	OGC	RIII	OE:D	DEDR
MStein	SCollins	DDambly	JDyer	RWBorchardt	FMiraglia
8/ /99	8/ /99	8/ /99	8/ /99	8/ /99	8/ /99

G: MKORD.WPD

From: Melanie Galloway *NMSS*  
To: cwe, Cxc5, Yhf *NMSS* *Charles Emigh, Charles Cox, Yawar*  
Date: Wed, Aug 25, 1999 11:04 AM *FAKAZ*  
Subject: activities of Morrison-Knudsen at FCSS facilities

I just received a call from John Monninger in NRR who is Bill Kane's tech asst who indicated that NRR and Region III are in the process of finalizing an enforcement package to Morrison-Knudsen for discrimination issues and they are interested in knowing whether any FCSS licensees have work performed by M-K such that we might be interested in the concerns identified. Please let John (and copy me) know of any activity by M-K at our facilities by COB today. Thanks.

CC: Jdm, Rcp

H/14

*[Signature]*

**From:** Yawar Faraz *NMSS*  
**To:** John Monninger *WRR*  
**Date:** Wed, Aug 25, 1999 2:58 PM  
**Subject:** Re: NMSS Interfaces with Morrison Knudsen

John,

MK has no current service contracts with USEC for its Paducah and Portsmouth gaseous diffusion plants. However, MK has provided services to USEC in the past and is on USEC's approved-supplier list. The extent of services provided are not known.

Yawar.

>>> John Monninger 08/25 10:44 AM >>>  
Aby,

The NRC is considering enforcement action against Morrison Knudsen (MK) to address employee protection and safety concerns resulting from work MK performed at power reactor licensees. This action has been coordinated with OGC, OE, NRR, and Region III.

We have several questions for you (NMSS) regarding this proposed action:

- 1) Qualitatively (large, small), to what extent does MK provide services to NMSS licensees? In other words, should we include NMSS on concurrence on the enforcement package, if it has the potential to impact contract support provided to NMSS licensees?
- 2) If MK provides services to NMSS licensees, could similar employee concern issues exist at these sites, such that the order should be more encompassing?
- 3) To what extent, does NMSS have knowledge of employee protection concerns regarding MK or previous enforcement actions in this area?
- 4) MK and British Nuclear Fuels recently purchased Westinghouse. To what extent do these companies provide support to NMSS licensee? In other words, should any NRC action taken affect more than just MK?

I spoke to Melanie Galloway (Fuel Cycle Division) regarding this subject, but thought that maybe a broader review may be needed (Waste Management, Fuel Cycle, Industrial and Medical, and Spent Fuel) to address NMSS duties and responsibilities.

Thanks for your assistance,  
John Monninger  
NRR/ADIP  
x3495

**CC:** Aby Mohseni, Melanie Galloway

H/15  
~~Q/H~~

**From:** Charles Cox *NMSS*  
**To:** John Monninger *WRR*  
**Date:** Wed, Aug 25, 1999 3:53 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

Attached is a note from the Paducah Senior Resident - MK does no work at Paducah. I will forward Portsmouth where they did do work while I was the Senior.

**CC:** Melanie Galloway

H/14  
~~6/17~~

**From:** Charles Cox *NMSS*  
**To:** John Monninger *WRR*  
**Date:** Wed, Aug 25, 1999 3:53 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

As I earlier stated, they did do work at Portsmouth but are not currently.

**CC:** Melanie Galloway

H/17  
*[Signature]*

**From:** John Greeves *NMSS*  
**To:** Aby Mohseni, John Monninger *NMSS, NRC*  
**Date:** Wed, Aug 25, 1999 7:50 PM  
**Subject:** Re: NMSS Interfaces with Morrison Knudsen

I think MK was involved with some H&I problems on the Fort St Vrain decommissioning project several years ago. Check with Region IV they have the details. MK also works on the Yucca Mt HLW project for DOE.

jtg

>>> John Monninger 08/25 10:44 AM >>>  
Aby,

The NRC is considering enforcement action against Morrison Knudsen (MK) to address employee protection and safety concerns resulting from work MK performed at power reactor licensees. This action has been coordinated with OGC, OE, NRR, and Region III.

We have several questions for you (NMSS) regarding this proposed action:

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I spoke to Melanie Galloway (Fuel Cycle Division) regarding this subject, but thought that maybe a broader review may be needed (Waste Management, Fuel Cycle, Industrial and Medical, and Spent Fuel) to address NMSS duties and responsibilities.

Thanks for your assistance,  
John Monninger  
NRR/ADIP  
x3495

**CC:** Melanie Galloway, William Kane

H/18  
A/19



From: Aby Mohseni *NMSS*  
 To: Donald Cool, E. William Brach, Elizabeth Ten Eyc... *NMSS*  
 Date: Wed, Aug 25, 1999 10:58 AM  
 Subject: Fwd: NMSS Interfaces with Morrison Knudsen

Please review the attached request from NRR (Bill Kane) and provide any information as appropriate.

Thanks  
 Aby

CC: Carl Paperiello, John Monninger, Martin Virgilio

\* MK was previously involved in commissioning at Ft. St. Vrain

\* MK works on Yucca Mtn Project for DCE  
 \* MK has provided services to USEC in past as on USEC's user list. approved supplier

\* MK did work at Portsmouth gas processing plants.

\* MK is involved in Part 71/Transp + Part 72/Storage areas.

(SFR) works to be included in distribution INC in compliance

H/19  
 GND

**From:** John Monninger, *NRR*  
**To:** Aby Mohseni, *NMSS*  
**Date:** Wed, Aug 25, 1999 10:44 AM  
**Subject:** NMSS Interfaces with Morrison Knudsen

Aby,

The NRC is considering enforcement action against Morrison Knudsen (MK) to address employee protection and safety concerns resulting from work MK performed at power reactor licensees. This action has been coordinated with OGC, OE, NRR, and Region III.

We have several questions for you (NMSS) regarding this proposed action:

- 1) Qualitatively (large, small), to what extent does MK provide services to NMSS licensees? In other words, should we include NMSS on concurrence on the enforcement package, if it has the potential to impact contract support provided to NMSS licensees?
- 2) If MK provides services to NMSS licensees, could similar employee concern issues exist at these sites, such that the order should be more encompassing?
- 3) To what extent, does NMSS have knowledge of employee protection concerns regarding MK or previous enforcement actions in this area?
- 4) MK and British Nuclear Fuels recently purchased Westinghouse. To what extent do these companies provide support to NMSS licensee? In other words, should any NRC action taken affect more than just MK?

I spoke to Melanie Galloway (Fuel Cycle Division) regarding this subject, but thought that maybe a broader review may be needed (Waste Management, Fuel Cycle, Industrial and Medical, and Spent Fuel) to address NMSS duties and responsibilities.

Thanks for your assistance,  
John Monninger  
NRR/ADIP  
x3495

**CC:** Melanie Galloway, William Kane

H/20  
*[Signature]*

2

**From:** Aby Mohseni, *NMSS*  
**To:** Donald Cool, E. William Brach, Elizabeth Ten Eyc... *NMSS*  
**Date:** Wed, Aug 25, 1999 10:58 AM  
**Subject:** Fwd: NMSS Interfaces with Morrison Knudsen

Please review the attached request from NRR (Bill Kane) and provide any information as appropriate.

Thanks  
Aby

**CC:** Carl Paperiello, John Monninger, Martin Virgilio

H/21  


**From:** E. William Brach *NMSS*  
**To:** AsM. *NMSS* *Aby Monninger*  
**Date:** Thu, Aug 26, 1999 4:51 PM  
**Subject:** Fwd: Re: Westinghouse Part 71 Certificates

Aby, in response to your e-mail earlier on NMSS involvement with MK, SFPO does have some involvement with MK (as a result of their and BNFL's purchase of Westinghouse) in the Part 71 transportation and 72 storage arena. But based on attached input from Ross Chappell, I would ask only that we be copied on NRR's actions so that we are aware of NRC actions relative to MK. I do not see a need for SFPO concurrence. Bill

**CC:** CRC1, MWH, PLE, SFS

H/22

*[Handwritten signature]*

**From:** Ross Chappell *NRSS*  
**To:** E. William Brach, Patricia Eng *NRSS*  
**Date:** Thu, Aug 26, 1999 9:12 AM  
**Subject:** Re: Westinghouse Part 71 Certificates

Bill,

Earlier this year, we transferred the Part 71 C of C's held by "Westinghouse Electric Corporation, a Division of CBS Corporation" to "Westinghouse Electric Company LLC (WELCO)". We understand that WELCO is jointly owned by Morrison Knudsen Corp and BNFL USA Group, Inc.

We have an application pending to make the same name change to the Certificate for the Model MC-10 storage cask. However, yesterday OGC informed us of a March 10, 1999, letter from Chuck Emeigh which approved the name change for 13 different NRC approvals, in bulk. Chuck's letter included the MC-10 storage cask. We also understand from Stu Treby that to change the name on the actual certificate for the storage cask would require a rule change.

Altogether, WELCO has two Part 71 C of C's, two Part 71 QA approvals (off-hand I don't know why they would have two), and one Part 72 C of C (for the MC-10).

We also have the following "Westinghouse" related user registrations for Part 71 packages:

Westinghouse Electric Corp (Columbia, SC) - 6 different packages

Westinghouse Electric Corp (Pensacola, Fla) - 2 different packages

Westinghouse Electric Corp (Sunnyvale, Cal) - 2 different packages

Westinghouse Electric Company LLC (Pittsburg, PA) - 11 packages, which includes the two CofC's they now hold.

With regard to your question yesterday about whether we know of any MK activities that would warrant our involvement in the proposed NRR action - I know of nothing. WELCO currently has no applications pending, and we are not aware of any ongoing fabrication (we would not necessarily know if they were fabricating packages). They probably ARE making shipments.

Ross

>>> E. William Brach 8/26/99 7:37:58 AM >>>

Ross, in response to the e-mail from Aby Mohensi yesterday about Morrison Knudson and planned NRR actions addressed to that company, I was wondering if the old Westinghouse Part 71 certificates transferred to BNFL or MK?

Pat, same question about previous Westinghouse QA program approvals?

Bill

**CC:** Susan Shankman

*HLB*  
*[Signature]*

From: Theodore Sherr, *NMSS*  
To: Charles Emeigh, Elizabeth Ten Eyck *NMSS*  
Date: Mon, Aug 30, 1999 11:47 AM  
Subject: Re: Fwd: NMSS Interfaces with Morrison Knudsen

Liz,

We have determined that MK is not involved with any of our facilities. In the Westinghouse case where MK had been mentioned, we have documentation that shows BNFL as the sole owner of WELCO which is our licensee.

Ted

>>> Elizabeth Ten Eyck 08/25 11:03 AM >>>

\* Please see attached. I think we have input to provide.

CC: Jack Davis, Michael Weber

\* The attached document is document 1 in this package.

H/24  
*[Signature]*

**From:** Donald Cool *NMSS*  
**To:** Aby Mohseni *NMSS*  
**Date:** Mon, Aug 30, 1999 1:22 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

Aby:

Here is a real potential conflict with what NRR proposes to do.

DACool

H/25

~~DAK~~

**From:** Douglas Collins *Region II*  
**To:** Donald Cool *NMSS*  
**Date:** Mon, Aug 30, 1999 1:07 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

Morrison Knudsen is co-owner of Westinghouse. As such, they are involved as co-owners in the Columbia fuel fabrication plant, in the Westinghouse ISFSI application, support of DOE efforts in the return of foreign research reactor spent fuel (transported under NRC general license with NAC or Edlow as broker), service to power reactors, potentially service to other licensees for diesel generators, etc. We are not aware of the degree of control they exercise in each of these areas.

>>> Donald Cool 08/25 11:09 AM >>>  
See attached:

What do the regions have in terms of support, or know about our licensee's being supported??

DACool

**CC:** Charles Hosey, Edward McAlpine, Mark Lesser, Th...

*✓ call about NMSS*



**From:** Aby Mohseni *NMSS*  
**To:** John Monninger *WRR*  
**Date:** Mon, Aug 30, 1999 1:46 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

More...

H/26



**From:** Donald Cool *NMSS*  
**To:** Aby Mohseni *NMSS*  
**Date:** Mon, Aug 30, 1999 1:23 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

Aby:

here is the Region IV response to your questions.

DACool

**From:** Dwight Chamberlain *Region IV*  
**To:** Donald Cool *NMSS*  
**Date:** Fri, Aug 27, 1999 1:34 PM  
**Subject:** Re: Fwd: NMSS Interfaces with Morrison Knudsen

Don,

We are not aware of any direct support to our licensees at this time. MK was previously involved with decommissioning at Ft. St. Vrain and they were a materials licensee about 7 years ago. There association with British Nuclear Fuels may result in involvement with dry cask storage activities but we are not aware of any direct involvement at this time.

Dwight

>>> Donald Cool 08/25 10:09 AM >>>

See attached:

What do the regions have in terms of support, or know about our licensee's being supported??

DACool

**From:** Charles H. Weil  
**To:** H. Brent Clayton, James Caldwell, James Gavula, ...  
**Date:** Mon, Mar 1, 1999 6:21 PM  
**Subject:** MORRISON KNUDSEN EMPLOYMENT DISCRIMINATION CASE (EA 98-081)

Attached for your review and consideration is a summary of the evidence in the above captioned enforcement action and application of the evidence to the question of did a violation occur/not occur. Please note that the document is PRIVILEGED UNDER ONE OR MORE FOIA EXEMPTIONS AND THE ATTORNEY CLIENT/WORK PRODUCT EXCEPTION. Therefore, this document is controlled, further dissemination should not be made, and the document destroyed following your review/use.

We will need to discuss this document and the additional information submitted by MK following the enforcement conference. We will also need an enforcement board to discuss the complainant's comments on the conference transcript. He received the transcript on approximately 2/23/99, and MK will be given the opportunity to rebut the complainant's comments. Therefore, the enforcement board to actually make the final decision is probably 45 to 60 days away, unless someone feels the necessity to talk before then about the attached analysis and the additional information from MK. Please let me know if an earlier board is needed. Chuck

H/27

**From:** Bruce Berson  
**To:** Michael Stein  
**Date:** Mon, Mar 1, 1999 3:19 PM  
**Subject:** MK Assessment

Mike, attached is the MK assessment. Please attach it to the OE Understands form for the conference call of several weeks ago as was agreed and ship it to whoever needs to get it. Thanks. Bruce

**CC:** Susan Chidakel

H/28

C O V E R  
S H E E T

FAX

U.S. NUCLEAR REGULATORY COMMISSION

OFFICE OF THE GENERAL COUNSEL

To:

Chuck Weil

Fax #:

630 - 810 - 4377

From:

Susan Chidake

Phone #:

301 415-1681

301-415-1535

Date:

12/28/98

Pages:

2

[including this cover sheet]

COMMENTS:

I/k

From: Bruce Berson  
To: Charles H. Weil  
Date: Fri, Mar 12, 1999 8:10 AM  
Subject: Re: MORRISON KNUDSEN (EA 98-081)

EX 5

>>> Charles H. Weil 03/10 4:32 PM >>>

The attached memo documents a contact with the complainant in the Morrison Knudsen case. The individual gave a tentative schedule for delivery of his comments about the enforcement conference transcript. Also, he again asked about obtaining the material about him that Morrison Knudsen provided after the conference.

I've spoken to Mike Stein and Jim Lieberman. OE presents a concern about releasing the information due to the possibility of an allegation of false information provided to DOL. Mike Stein suggested that I talk to Bruce Berson about this issue. (Bruce is out of the office until 3/11/99, and I'll talk to Bruce) I've also spoken to Susan, and OGC does not have an objection to releasing the material.

However, the bottom line is that we must make a decision and inform the complainant ASAP. Regardless of the decision, we'll need to formulate a cover letter, and I'll probably need help in developing that letter if we're not releasing the material.

Do we need a conference call to make a final decision about releasing the information?

Chuck

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in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA- 2000-0014

II/2

# EXEMPT FROM DISCLOSURE

~~ATTACHMENTS TO ALAIN ARTAYET LETTER~~

ADDRESSES

ALAIN ARTAYET

EX. 6

STEVEN D. BELL, ESQ.

ULMER & BERNE, LLP

1-216-902-8831

BOND COURT BUILDING

1300 EAST 9TH STREET, SUITE 900

CLEVELAND, OH 44114-1583

EX 6

AS OF 2/26/99

ALAIN ARTAYET

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I/3 EX. 6