

AAMODT LAW FIRM

FOIA/PA REQUEST



May 14, 2012

Case No.:

2012-00057A

Date Rec'd:

5-15-12

Specialist:

Y. Dunn

Related Case:

2012-0073

Sent via U.S. Mail, First Class, Electronic Mail and Facsimile (301) 415-5130

Mr. Darren B. Ash
NRC Freedom of Information Act Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-5 F09
Washington, DC 20555-0001
FOIA.resource@nrc.gov

Re: *This is a Freedom of Information Act Appeal (Request 2012-73)*

Dear Mr. Ash:

This is an appeal pursuant to 5 U.S.C. § 552(a)(6), concerning the U.S. Nuclear Regulatory Commission's (herein "NRC's" or the "Agency's") refusal to disclose certain documents within its control in their entirety. On or about November 22, 2011, our office requested that the Agency produce true and correct copies of the following documents, whether in written or electronic form:

1. Any and all permit applications submitted to the NRC by the Halliburton Company to receive and/or dispose of material from the Fort Calhoun Nuclear Generating Station at the Halliburton Company's Duncan Site;
2. Any and all permit applications submitted to the NRC by Halliburton Energy Services, Inc. to receive and/or dispose of material from the Fort Calhoun Nuclear Generating Station at Halliburton Energy Services, Inc.'s Duncan Site¹;
3. Any and all permits issued by the NRC to the Halliburton Company to receive and/or dispose of material from the Fort Calhoun Nuclear Generating Station at the Halliburton Company's Duncan Site;
4. Any and all permits issued by the NRC to Halliburton Energy Services, Inc. to receive and/or dispose of material from the Fort Calhoun Nuclear Generating Station at Halliburton Energy Services, Inc.'s Duncan Site;

¹ The request defined "Duncan Site" to mean the property near Duncan, Oklahoma, in the North Half (N/2) of the Southeast Quarter (SE/4) of Section 8, Township 1 North, Range 7 West, situated in Stephens County, Oklahoma.

5. Any and all correspondence, including, but not limited to, letters, memorandum, electronic mail, facsimile, generic communications, and notes, between the NRC and the Halliburton Company regarding the receipt and/or disposal of material from Fort Calhoun Nuclear Generating Station at the Halliburton Company's Duncan Site;
6. Any and all correspondence, including, but not limited to, letters, memorandum, electronic mail, facsimile, generic communications, and notes, between the NRC and Halliburton Energy Services, Inc. regarding the disposal of material from Fort Calhoun Nuclear Generating Station at Halliburton Energy Services, Inc.'s Duncan Site;
7. Any and all correspondence, including, but not limited to, letters, memorandum, electronic mail, facsimile, generic communications, and notes, between the NRC and the Oklahoma Department of Health regarding the Halliburton Company's Duncan Site;
8. Any and all correspondence, including, but not limited to, letters, memorandum, electronic mail, facsimile, generic communications, and notes, between the NRC and the Oklahoma Department of Health regarding Halliburton Energy Services, Inc.'s Duncan Site;
9. Any and all correspondence, including, but not limited to, letters, memorandum, electronic mail, facsimile, generic communications, and notes, between the NRC and the Oklahoma Department of Environmental Quality regarding the Halliburton Company's Duncan Site;
10. Any and all correspondence, including, but not limited to, letters, memorandum, electronic mail, facsimile, generic communications, and notes, between the NRC and the Oklahoma Department of Environmental Quality regarding Halliburton Energy Services, Inc.'s Duncan Site;
11. Any and all complaints received regarding Halliburton Company's Duncan Site;
12. Any and all complaints received regarding Halliburton Energy Services, Inc.'s Duncan Site;
13. Any and all inspection reports performed by the NRC of Halliburton Company's Duncan Site, including, but not limited to, reports from inspections conducted at the Duncan Site in January 1987;
14. Any and all inspection reports performed by the NRC of Halliburton Energy Services, Inc.'s Duncan Site, including, but not limited to, inspections conducted at the Duncan Site in January 1987;
15. Any and all notices of violations issued by the NRC to the Halliburton Company regarding Halliburton Company's activities at its Duncan Site;
16. Any and all notices of violations issued by the NRC to Halliburton Energy Services, Inc. regarding Halliburton Energy Services, Inc.'s activities at its Duncan, Oklahoma site;

17. Any and all reports of radioactive contamination found at the Halliburton Company's Duncan Site, including, but not limited to data, monitoring reports, and levels of radioactive contamination;
18. Any and all radioactive contamination found at Halliburton Energy Services, Inc.'s Duncan Site, including, but not limited to data, monitoring reports, and levels of radioactive contamination;
19. Any and all final opinions, including concurring and dissenting opinions, as well as orders, made with regards to Halliburton Company's Duncan Site;
20. Any and all final opinions, including concurring and dissenting opinions, as well as orders, made with regards to Halliburton Energy Services, Inc.'s Duncan Site;
21. Any and all statements of policy adopted by the NRC and not published in the Federal Register from 1982-1990;
22. Any and all administrative staff manuals and instructions to staff, including, but not limited to, regulatory guides, enforcement guidance, inspection manuals, and management directives, applicable to Halliburton Company's Duncan Site;
23. Any and all administrative staff manuals and instructions to staff, including, but not limited to, regulatory guides, enforcement guidance, inspection manuals, and management directives, applicable to Halliburton Energy Services, Inc.'s Duncan Site;
24. Any and all other records regarding Halliburton Company's Duncan Site;
25. Any and all other records regarding Halliburton Energy Services, Inc.'s Duncan Site;

The Agency responded to the above request on April 12, 2012,² producing twenty-eight documents in their entirety, identifying two documents that were publicly available, and five documents that were produced with redactions of certain information.

Many of the Agency's redactions do not appear to subject to the identified exceptions and as such, refusal to produce the documents in their entirety violates the Freedom of Information Act (herein "FOIA" or the "Act"), 5 U.S.C. § 552, *et seq.* By this letter, we are therefore making a timely appeal pursuant to 5 U.S.C. § 552(a)(6) in response to the Agency's insufficient response to our FOIA request.

NRC's Stated Exemptions

In the five documents produced with redactions, the Agency's redactions fall into the following categories. The first category, of which we do not appeal, is the redaction of personal information—such as Social Security numbers and birthdates—from resumes and other documents contained within the redacted documents. The second category is the redaction of

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Our office received the NRC's response on or about April 21, 2012.

possession limits of certain by-products or nuclear material (herein “possession limits redactions”). The third category is the redaction of certain information regarding the calibration of instruments used in testing (herein “calibration redactions”). The fourth category is the redaction of “Sensitivity Range” information (herein “sensitivity range redactions”). The fifth and final category is the redaction of complete pages of information, leaving no ability for our office to determine the applicability of the identified exemptions (herein “complete redactions”). For the reasons stated below, we do not agree that the redactions in the aforementioned second, third, fourth or fifth categories are properly exempt from disclosure.

Discussion

The Agency’s stated reason for the possession limit redactions, calibration redactions, and sensitivity range redactions is that these items fall under Exemption (b)(7)(F)—information that could reasonably be expected to endanger the life or physical safety of any individual. *See* 5 U.S.C. § 552(b)(7)(F). However, the information must meet the exemption’s threshold requirement that the information be “records or information compiled for law enforcement purposes.” *Id.* The redacted records do not meet this definition; the records consist of permit applications, actual permits, and permit renewals. Moreover, the documents—while relating to hazardous materials that can injure individuals—are not likely to *endanger* any individuals because the records are from Halliburton’s activities from more than twenty-five years ago and only list information regarding the inventory of materials at that time.

In addition to the invocation of Exemption (b)(7)(F), the Agency also relies on Exemption (b)(4)—trade secrets or financial information that is considered to be confidential business (propriety) information. *See* 5 U.S.C. § 552(b)(4). However, the information that has been redacted is not a “trade secret” or even “financial information”; the information is the actual permitted items for Halliburton’s operations in the 1980s. Specifically, the permits are establishing the maximum amount of certain hazardous materials Halliburton can possess at the facility under its permit, the sensitivity range for radiation detection under the permit, and how certain instruments should be calibrated.

Finally, the Agency completely redacted several pages from the documents identified as Renewal of Halliburton Services Byproduct Material License No. 35-00502-03 and the Application for Byproduct Material License. The only reason listed relating to the redaction of these pages is a simple reference to Exemption (b)(4)—information that is considered to be confidential business (propriety) information. *See* 5 U.S.C. § 552(b)(4). The Agency failed, as it is required, to describe in detail the basis for the redaction, as well as the reasons the Agency believes the exemption applies in this instance. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). This information must be “sufficiently specific to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

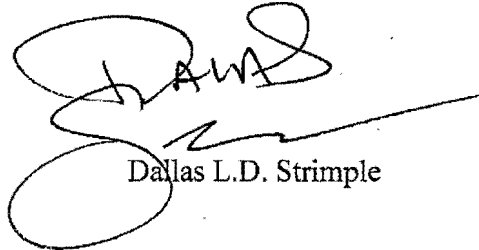
Conclusion

It appears that the Agency has acted arbitrarily and capriciously by improperly redacting certain documents in response to our FOIA request. If the Agency does not provide a response

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to this appeal timely, we reserve our rights under FOIA to seek judicial review, including the award of attorney's fees. We look forward to your prompt reply.

Respectfully,

A handwritten signature in black ink, appearing to read "D. Strimple", with a long horizontal flourish extending to the right. The signature is written over the printed name "Dallas L.D. Strimple".

Dallas L.D. Strimple

FOIA Resource

From: Dallas Strimple [dallas@aamodt.biz]
Sent: Monday, May 14, 2012 5:01 PM
To: FOIA Resource
Subject: Freedom of Information Act Appeal (Request 2012-73)
Attachments: 20120514155444523.pdf

To whom it may concern,

Please find attached an appeal to the NRC's response to FOIA request 2012-73. A copy of this has also been deposited in the U.S. Mail today, and sent via facsimile.

Respectfully,

Dallas Strimple

Dallas Lynn Dale Strimple, Esq.
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