

April 29, 2014

Michael Cromer, Esq.
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2 Rector Street, 14th Floor
New York, New York 10006

RE: New York City Asbestos Litigation, No. 100867/04
NRC File No. TR-14-05

Counselor:

The Office of the General Counsel at the U.S. Nuclear Regulatory Commission has received a copy of a judicial order directing issuance of an “open commission” seeking records related to any radiation exposure sustained by Robert D. Freeman. This order appears to be a “demand for information” as contemplated by 10 C.F.R. § 9.200, *et seq.* and would appear to be covered by those regulations. This Office has assigned the processing number “TR-14-05” to your request; please refer to that number in any future correspondence regarding this matter.

Initially, you have served a state court subpoena on a federal agency. As we discussed in our phone conversation, state court subpoenas are not binding on federal agencies under the principles of sovereign immunity unless the agency has explicitly waived that immunity. See, e.g., *Boron Oil Company v. Downie*, 873 F.2d 67, 70 (4th Cir. 1989). Here, the NRC has not waived that immunity; thus, the subpoena is not enforceable against the NRC. However, the General Counsel will generally exercise her discretion to provide documents in response to a state court subpoena if – as discussed below – the requester can satisfy the requirements of 10 C.F.R. § 9.202 and, as applicable, the Privacy Act.

Specifically, Section 9.202 requires a requester to submit an affidavit describing (in some detail) (1) the nature of the information sought; (2) the nature of the issues in dispute in the litigation; (3) the relevance of the information sought; and (4) why the information is not available elsewhere. We will treat any submission under Section 9.202 as confidential to the extent allowed by law; thus, we expect any submission to provide significant detail in response to these questions. Please address your affidavit to:

Margaret M. Doane, General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852
ATTENTION: Charles E. Mullins

You may email an advance copy of the affidavit to me at the email address below. If the requesting party does not comply with the agency's regulations governing these requests, the agency may deny the request. *United States ex rel Touhy v. Ragan* 340 US 462 (1951); *Davis Enterprises v. EPA*, 877 F.2d 1181 (3d Cir. 1989).

In addition, your request appears to seek records that may fall under the protection of the Privacy Act, 5 U.S.C. § 552a ("the Act). Thus, assuming that your affidavit satisfies the requirements of the NRC's regulations, the agency still cannot release the requested documents unless you (1) provide a release signed by the individual involved (or in this case the surviving spouse); (2) demonstrate that you meet a provision of the Act that allows for release of these records without the individual's permission; or (3) demonstrate that the Act does not apply to the records you are seeking.

The Act allows the agency to release the records pursuant to the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). For purposes of Privacy Act compliance, the NRC considers itself legally bound only by a court order from the U.S. District Court for the District of Maryland (or another federal court with appropriate jurisdiction); it is not bound by a state court order under the principles of sovereign immunity. However, as we discussed, you have submitted a judicial order signed by a state court judge, which the General Counsel usually recognizes through the exercise of her discretion.

Finally, as we discussed, we will need a specific list of documents that you are seeking. We would note that the NRC does not normally require employees to wear dosimeters while at work at NRC facilities. Instead, they would only be worn by those employees who work at or who visit licensed facilities. Normally, those records are retained by the licensed facility.

Please feel free to call either myself (301-415-1618) or Mr. Jeremy M. Suttentberg (301-415-2842) if you have any questions.

Sincerely,
/ra/

Charles E. Mullins
Senior Attorney
Office of the General Counsel