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January 8, 1992

APPEAL OF INITIAL FOIA DECISION

92A1E(91-533)

Rec'd 1-9-92

FREEDOM OF INFORMATION APPEAL

OVERNIGHT MAIL

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Freedom of Information Act Request 91-533

Dear Sir or Madam:

This will appeal the denial of information requested by me as legal counsel for the University of Cincinnati under the Freedom of Information Act and Agency Regulations. My letter of request sent on November 27, 1991 was denied by James Lieberman, Director, Office of Enforcement on January 8, 1992. A copy of the denial letter is attached.

In the denial letter, Mr. Lieberman invoked the terms of exemption 7(A) and concluded that access would be denied to the requested documents. The explanation of that denial is insufficient in scope, lacking in legal basis and incapable of withstanding close scrutiny by the courts, should judicial de novo review be sought. In addition, the stated exemption is inconsistent with the position the NRC is taking with respect to an enforcement conference currently scheduled with the University of Cincinnati on January 29, 1992 at Region III headquarters in Glen Ellyn, Illinois. I incorporate herewith by reference my letter to Robert Hardzog, Chief, FOIA/LPDR Branch, Division of Freedom of Information and Public Services dated December 26, 1991.

In particular, there is absolutely no basis upon which "disclosure could reasonably expect to interfere with an enforcement proceeding" as the NRC alleges in its denial of this request. There is no reasonable possibility that the material "requested would reveal the scope, direction and focus of enforcement efforts or could possibly allow recipients to take

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action to shield potential wrongdoing" because the NRC has already conducted its investigation and has come to the conclusion that the violations occurred. Indeed, in the NRC's own terms, the violations have been "substantiated." These violations will be the subject matter of an enforcement conference between the NRC Region III and the University of Cincinnati on January 29, 1992.

Furthermore, the information requested is essential to the University's preparation for its enforcement conference with the NRC. Since the NRC will ask the University to comment on the accuracy of the facts underlying the violations; it is simply unfair to withhold those facts from the University prior to the enforcement conference.

PLEASE NOTE THAT THE ENFORCEMENT CONFERENCE IS SCHEDULED FOR JANUARY 29, 1992. PLEASE NOTE THAT TIME IS OF THE ESSENCE WITH REGARD TO THIS APPEAL. I WOULD APPRECIATE IF THIS APPEAL WOULD RECEIVE IMMEDIATE AND PROMPT ATTENTION.

Please call me should you have any questions or need further information. I would appreciate hearing from you as soon as possible.

Yours very truly,

DINSMORE & SHOHL



Kenneth S. Resnick
Legal Counsel for
The University of Cincinnati

cc: Robert Hardzog
Chief, FOIA-LPDR Branch
FAX: 301-492-7617
KSR:ymm