



HUDOW

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA - 96-347

RESPONSE TYPE

☒ FINAL

☐ PARTIAL

DATE

OCT 16 1996

DOCKET NUMBER(S) (If applicable)

REQUESTER

Mr. John T. Van Gessel

PART I. AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

No agency records subject to the request have been located.

No additional agency records subject to the request have been located.

Requested records are available through another public distribution program. See Comments section.

Agency records subject to the request that are identified in Appendix(es) _____ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

☒ Agency records subject to the request that are identified in Appendix(es) *A* are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.

The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.

Agency records subject to the request that are identified in Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.

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, N.W., Washington, DC.

Agency records subject to the request are enclosed.

Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.

Fees

You will be billed by the NRC for fees totaling \$ _____.

You will receive a refund from the NRC in the amount of \$ _____.

In view of NRC's response to this request, no further action is being taken on appeal letter dated _____, No. _____.

PART II. A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

☒ Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

COMMENTS

These records were referred to NRC by the DOE for review and direct response to you.

*FOIA
0/1*

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

9610180140 961016
PDR FOIA
VAN GES96-347 PDR

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**
(CONTINUATION)

FOIA NUMBER(S)

FOIA -96-347

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PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) B are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

<input type="checkbox"/>	1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)
<input type="checkbox"/>	2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)
<input type="checkbox"/>	3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)
<input type="checkbox"/>	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).
<input type="checkbox"/>	Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
<input type="checkbox"/>	4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)
<input type="checkbox"/>	The information is considered to be confidential business (proprietary) information.
<input type="checkbox"/>	The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).
<input type="checkbox"/>	The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).
<input type="checkbox"/>	5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:
<input type="checkbox"/>	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.
<input type="checkbox"/>	Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)
<input type="checkbox"/>	Attorney-client privilege. (Confidential communications between an attorney and his/her client.)
<input type="checkbox"/>	6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)
<input checked="" type="checkbox"/>	7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)
<input type="checkbox"/>	Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could 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. (Exemption 7 (A))
<input checked="" type="checkbox"/>	Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7(C))
<input type="checkbox"/>	The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))
<input type="checkbox"/>	OTHER

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) 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 persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECRETARY	IG
<i>R. A. Watkins</i>	<i>Acting Assistant Inspector General for Investigations</i>	<i>Appendix B</i>			<input checked="" type="checkbox"/>

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

APPENDIX A

RECORDS BEING PLACED INTO THE PDR UNDER THE ABOVE REQUEST NUMBER

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	4/1/92	Letter to I. Selin from G. Miller re: Disposal of radioactive contaminated waste [Document 108] (2 pages)
2.	4/1/92	Letter to I. Selin from G. Miller re: Disposal of radioactive contaminated waste [Document 181] (2 pages)
3.	4/23/92	Memo to H. L. Thompson from A. B. Davis re: Answers to Congressman Miller's Questions Regarding DOE Disposal of Radioactive Contaminated Waste [Document 198] (2 pages)
4.	4/24/92	Letter to G. Miller from I. Selin re: Response to 4/1/92 letter [Document 180] (1 page)
5.		NRC Staff Responses to Questions from the Honorable George Miller [Document 182] (5 pages)

APPENDIX B

RECORDS PARTIALLY WITHHELD

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION & EXEMPTION</u>
1.	3/26/92	Memo to File 92-33I re: Meeting Between OIG and NMSS to Discuss Disposal of Special Nuclear Material (SNM) [Document 107] (4 pages) EX. 7C
2.	5/11/92	Report of Interview [Document 202] (1 page) EX. 7C
3.	Undated	Memo to File 92-31I re: Hazardous Waste Disposal by DOE Contractor [Document 203] (1 page) EX. 7C



Chemical Waste Management, Inc.

3001 Butterfield Road
Oak Brook, Illinois 60521
708/218-1500

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-96-347

Rec'd. 8-28-96

(referred from DOE)

December 18, 1992

FOIA Officer
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box E
Oak Ridge, Tennessee 37831-8510

FOIA Officer
Headquarters
Department of Energy
Washington, D.C. 20585

Re: Freedom of Information Request

Dear FOIA Officers:

On behalf of Chemical Waste Management, Inc. ("CWM"), I am writing to request, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, the prompt release of copies of agency records identified herein. Unless otherwise indicated in a specific paragraph below, this request is limited to information about the Department of Energy's ("DOE") operation through its contractor Martin Marietta Energy Systems, Inc. ("MMES") of DOE's facilities in Oak Ridge, Tennessee. The request is not limited, however, to documents at that location.

1. Any and all records reflecting or relating to waste, material, or debris sent, or where any steps were taken to send, either directly or indirectly, from DOE's Oak Ridge facilities to CWM for treatment, storage or disposal. As an aid to the gathering of these records, Exhibit A provides a listing of the hazardous waste manifest and profile numbers for the shipments of waste from MMES to CWM for 1990 and 1991, but this request encompasses all shipments to CWM facilities. This request includes, but is not limited to, all records relating to:
 - (a) the location from which the waste, material, or debris originated;
 - (b) characterization of the waste, material, or debris, and characterization of the area of the Oak Ridge facilities from which the waste originated;
 - (c) sampling of the waste, material, or debris;



- (d) analyses of the waste, material, or debris, including samples thereof, for hazardous or radioactive constituents;
- (e) classification of the waste, material or debris;
- (f) any data pertaining to the waste, material or debris; and
- (g) purchase orders or purchasing documentation.

The data requested herein should include, but is not limited to, all records in the form of Exhibit B hereto, which reflects analyses for thorium, uranium, U235, and alpha, beta and gamma activity.

2. Any and all records reflecting or relating to the free release, release for unrestricted use, or transfer to persons not licensed to possess radioactive material, of waste or material containing or potentially containing radioactivity. Such records include, but are not limited to, DOE Orders, MMES Policy and Procedure documents, and any other guidelines, standards, policies, practices, procedures, positions, plans, interpretations or requirements, as well as any reports, memoranda, correspondence or documents discussing, requesting approval of, approving or disapproving such release criteria.
3. Any and all records reflecting or pertaining to the 32 pCi/g of uranium release criterion that was employed by DOE or MMES in sending material off-site, including to CWM.
4. Any and all records reflecting or relating to the classification of radioactivity as "de minimis," "below regulatory concern," "exempt," or "unregulated." Such records include, but are not limited to, DOE Orders, MMES Policy and Procedure documents, and any other guidelines, standards, policies, practices, procedures, positions, plans, interpretations or requirements, as well as any reports, memoranda, correspondence or documents discussing, approving or disapproving such classifications.
5. Any and all records reflecting or relating to studies or determinations of the background levels of radioactivity, including the normal or naturally occurring concentrations of uranium isotopes and other radionuclides in soil and rock, either at the Oak Ridge facilities or at CWM's facility in Emelle, Alabama. Such records include, but are not limited to, records relating to the Y-12 and K-25 areas.
6. Any and all documents reflecting or relating to that waste described in Exhibit C attached hereto, whose disposal at CWM's Emelle, Alabama facility was denied by CWM. These documents should include those reflecting or relating to the information described in



Paragraph 1. (a) - (g) of this request, as well as documents reflecting or relating to the final disposition of that waste.

7. Any and all records reflecting or relating to remediation at the Oak Ridge facility of waste, material, or debris that was sent for off-site disposal to CWM. See Exhibit B.
- * 8. Any and all records, reports, or results of investigations performed by MMES, DOE, or the Inspector General reflecting or related to MMES' shipment for off-site disposal to any and all CWM facilities, including CWM's Emelle, Alabama facility, of waste containing uranium, thorium, or other sources of radiation, including any special nuclear material, source material, or by-product material.
9. Any and all documents reflecting claims made or suits brought against DOE or MMES in which one of the issues is radioactivity in waste sent for off-site disposal.
10. Any and all records reflecting or relating to meetings between MMES and CWM employees on or about December 17, 1990 at Oak Ridge, Tennessee. The meeting may have been attended by Jim Buckley, Sid duMont, January Womack and Jim Campbell of CWM, and Chuck Eden, Ken Delius, Ron Kimmitt and Tim Faust of MMES and may have been attended by others. Please include any records used or prepared leading up to the meeting, used or prepared at the meeting, or used or prepared after the meeting related to the subject of radioactive levels in material sent for disposal at CWM's Emelle, Alabama facility.
11. Any and all records reflecting or relating to any discussions between MMES and CWM employees concerning radioactivity in waste sent or to be sent to CWM.
12. Any and all records and documents provided by DOE or MMES to any officer, agency, or employee of the State of Alabama, including the Office of Attorney General, relating to waste sent to CWM.
13. Any and all records reflecting or identifying the extent to which enriched, depleted or otherwise processed uranium has been used in the Y-12 and K-25 areas.
14. Any and all records reflecting or identifying portions of the Y-12 and K-25 areas contaminated, or potentially contaminated with uranium or other radionuclides from operations at the Oak Ridge facilities.
15. Any and all records reflecting or relating to agreements, or consent agreements, between 1) DOE and any contractor or subcontractor at the Oak Ridge facility and 2) any state or other government entity regarding mixed waste. Please include the agreements and



FOIA Officers
December 18, 1992
Page 4

consent agreements themselves. By "mixed waste", this request means waste that is both hazardous and radioactive, including low levels of radioactivity.

16. Any and all records reflecting or relating to inventories prepared by DOE or MMES of mixed waste generated at the Oak Ridge facilities and not sent to either CWM's Emelle facility or to any other hazardous waste facility.

If any part of the records requested above discloses communications which, in your opinion, fall within an exemption specified in 5 U.S.C. § 552(b), we request that you exercise your discretion to release the records. See 32 C.F.R. § 701.4. Alternatively, we request that the excluded matters be identified and that the remainder of the record or records be produced, as required by 5 U.S.C. § 552(c).

If you determine to withhold any records (or parts of records) please provide us with a Vaughn index listing each of the withheld records and explaining the basis on which it has been withheld. We request that you produce requested records as they are cleared for release rather than awaiting the completion of your review of all the records.

We commit to pay any reasonable charges incurred in searching for or copying the requested records upon presentation of an invoice accompanying the records. If these fees are to exceed \$1000.00, please contact the undersigned right away. Independent of our commitment to pay reasonable fees, we request that you waive or reduce any such fees pursuant to 32 C.F.R. § 701.4(d)(1).

We would appreciate receipt of the requested records as soon as possible. Our client has an emergent need for the records requested. If you have any questions about this request, please call me. Thank you in advance for your assistance in this matter.

Sincerely,

John T. Van Gessel
Senior Counsel
708-218-1638

cc: Wilson Horde, Esq.

Document Number 108

11

47

GEORGE MILLER, CALIFORNIA, CHAIRMAN
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U.S. House of Representatives
Committee on
Interior and Insular Affairs
 Washington, DC 20515-6201

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 STAFF DIRECTOR
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 GENERAL COUNSEL
 DANIEL VAL KERN
 REPUBLICAN STAFF DIRECTOR

April 1, 1992

Hon. Ivan Selin
 Chairman
 Nuclear Regulatory Commission
 Washington, D.C. 20555

Dear Mr. Selin:

On February 20, the Committee on Interior and Insular Affairs held an oversight hearing to examine the disposal of radioactive contaminated waste from Department of Energy (DOE) weapons complexes.

Testimony from the DOE, incinerator companies and a DOE contractor revealed that between 1980 and 1991, the DOE failed to regulate the radioactive content of hazardous waste released for offsite disposal. Instead, each DOE contractor established its own "below-regulatory-concern" policy. The DOE confirmed that special nuclear and byproduct materials had been shipped to seven treatment, storage and disposal (TSDs) facilities, with three more suspected of receiving contaminated waste. These facilities did not have the requisite permits to handle this waste.

Although the DOE has so far investigated only shipments from Oak Ridge, thousands of tons of hazardous waste have been released by DOE complexes throughout the country. Several agreement states are currently conducting investigations into possible violations of the Atomic Energy Act. Given the NRC's responsibility to enforce the law in non-agreement states, please provide the Committee with responses to the following questions:

- o When did the NRC first learn that unlicensed TSDs had been handling special nuclear and byproduct materials from DOE weapons complexes? How did the NRC learn of these shipments?
- o Has the NRC investigated possible violations of the Atomic Act by TSDs receiving waste from DOE complexes? Please provide full and complete details of all investigations.

4/2...To EDO to Prepare Response for Signature of Chairman ...Date due Comm:
 April 15...Cpy to: Chairman, Comrs, OGC, OCA to Ack, RF...92-0274

POB

04.07.92 09:59PM * USNR-4-MN312

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Hon. Ivan Selin
April 1, 1992
Page 2

2

- o What procedures has NRC put in place to make certain that DOE does not ship nuclear and byproduct waste to unlicensed facilities? What procedures should DOE put in place to make certain that such shipments do not occur in the future?
- o What other action has the NRC taken to ensure that the Atomic Energy Act is currently being enforced?

Please supply this information to the Committee no later than 5:00 pm, April 17, 1992.

If you or your staff has any questions, please contact Celia Boddington of the Committee staff on 226-0200.

Thank you for your assistance.

Sincerely,



GEORGE MILLER
Chairman

cc Honorable Don Young
Honorable Peter Kostmayer
Honorable John J. Rhodes, III

Document Number 181

A/2

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U.S. House of Representatives
 Committee on
 Interior and Insular Affairs
 Washington, DC 20515-6201

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 RICHARD M. REITER
 GENERAL COUNSEL
 DANIEL YALOWITZ
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April 1, 1992

Hon. Ivan Selin
 Chairman
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Although the DOE has so far investigated only shipments from Oak Ridge, thousands of tons of hazardous waste have been released by DOE complexes throughout the country. Several agreement states are currently conducting investigations into possible violations of the Atomic Energy Act. Given the NRC's responsibility to enforce the law in non-agreement states, please provide the Committee with responses to the following questions:

- o When did the NRC first learn that unlicensed TSDs had been handling special nuclear and byproduct materials from DOE weapons complexes? How did the NRC learn of these shipments?
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Hon. Ivan Selin
April 1, 1992
Page 2

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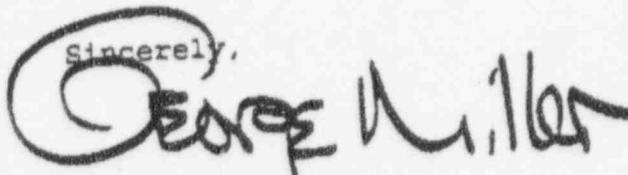
- o What procedures has NRC put in place to make certain that DOE does not ship nuclear and byproduct waste to unlicensed facilities? What procedures should DOE put in place to make certain that such shipments do not occur in the future?
- o What other action has the NRC taken to ensure that the Atomic Energy Act is currently being enforced?

Please supply this information to the Committee no later than 5:00 pm, April 17, 1992.

If you or your staff has any questions, please contact Celia Boddington of the Committee staff on 226-0200.

Thank you for your assistance.

Sincerely,



GEORGE MILLER
Chairman

cc Honorable Don Young
Honorable Peter Kostmayer
Honorable John J. Rhodes, III

Document Number 198

A/3