

FREEDOM OF INFORMATION
ACT REQUEST

HARMON, CURRAN & SPIELBERG

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SUITE 430

WASHINGTON, D.C. 20009-1125

FOIA-96-336

Rec'd 8-22-96

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(202) 328-6918

August 22, 1996

Russel Powell, Chief
FOIA-LPDR Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

BY FAX: 301/415-5130

SUBJECT: Freedom of Information Act Request

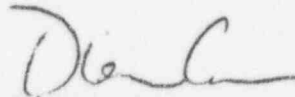
Dear Mr. Powell:

On behalf of Native Americans for a Clean Environment, and pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et. seq., I hereby request that you provide NACE with a copy of all documents in the NRC's possession which the Commission considered or reviewed in connection with its preparation of a Staff Requirements Memorandum ("SRM"), SECY-96-124, re: Financial Assurance for General Atomics Facilities (July 8, 1996). This request includes but is not limited to any correspondence from the NRC staff seeking the issuance of the SRM or other guidance from the Commission on decommissioning funding for the General Atomics facilities. This request does not include any docketed decisions by the Licensing Board or filings by any party to the Sequoyah Fuels decommissioning case, Docket No. 40-8027-EA.

This request covers written correspondence, memoranda, or reports, and also includes records of any oral or e-mail or other electronic communications.

I look forward to receiving your response within ten days, as required by the FOIA.

Sincerely,


Diane Curran

cc: Lance Hughes, Director, NACE

APPENDIX A
(RECORDS RELEASED)

1. 6/13/96 Letter to Keith Asmussen, General Atomics from Elizabeth Ten Eyck (2 pages)
2. 6/28/96 Commissioner Rogers' Vote on SECY-96-124 (1 page)

APPENDIX B
(RECORDS WITHHELD IN PART)

1. 6/10/96 SECY-96-124 For the Commissioners from James Taylor,
Subject: Financial Assurance for General Atomics
Facilities (6 pages) EX. 4 and 5 enclosing 5/20/96
letter to NRC from Keith Asmussen with enclosures
(13 pages) EX 4

NOTE: Non-proprietary version of 5/20/96 letter and
enclosures are already available at the PDR, Accession
No. 9605300115
2. 7/9/96 Letter to Dr. Keith Asmussen from Seymour Weis (2 pages)
EX. 4

APPENDIX C
(RECORDS WITHHELD IN THEIR ENTIRETY)

1. 6/28/96 Memo/Vote - Financial Assurance for General Atomic Facilities (1 page) EX. 5
2. 7/1/96 Memo from Chairman Jackson to James Taylor, Financial Assurance for Facilities with handwritten note (1 page) EX. 5
3. 6/28/96 Background Information on Financial Assurance (SECY-96-124) (2 pages) EX. 5
4. 6/17/96 Note to Chairman Jackson from Roger Davis, SECY-96-124 with handwritten notes (4 pages) EX. 4 and 5
5. 6/12/96 Memo to Commissioner Kenneth Rogers from Myron Karman regarding SECY-96-124 (2 pages) EX. 4 and 5



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 13, 1996

Dr. Keith E. Asmussen, Director
Licensing, Safety and Nuclear Compliance
~~General Atomics~~
P.O. Box 85608
San Diego, California 92186-9784

SUBJECT: PUBLIC DISCLOSURE DETERMINATION (TAC NO. L21653)

Dear Dr. Asmussen:

This is in response to your letter and affidavit executed by John E. Jones, dated May 20, 1996, requesting that information concerning decommissioning cost estimates be withheld from public disclosure pursuant to 10 CFR 2.790.

The affidavit states that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

1. The information contained in the document has been held in confidence by General Atomics in that it is of a privileged and confidential commercial nature.
2. The information contained in the document has not been made available to public sources by General Atomics, nor has General Atomics authorized that it be made available.
3. The public disclosure of the information contained in the document is likely to cause substantial economic harm to General Atomics.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.790 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information.

Therefore, the version of the submitted information marked as proprietary will be withheld from the public disclosure pursuant to 10 CFR 2.790(b)(5) and Section 103 (a) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

AM

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Dr. Keith E. Asmussen

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If the basis for withholding this information from public inspection should change in the future, such that the information could then be made available for public inspection, you should promptly notify the NRC. You should also understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Sincerely,

ORIGINAL SIGNED BY E. Q. TEN EYCK

Elizabeth Q. Ten Eyck, Director
Division of Fuel Cycle Safety
and Safeguards, NMSS

Docket 70-734
License SNM-696

Distribution:

(Control No. 190S)

Docket 70-734

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I have no objection to the staff's
proposed action in this matter.
In addition, I concur in the comm
made by the Chairman.

96 JUN 11 PM 3:30

Kenneth C. Rogers
Kenneth C. Rogers
6/28/96

POLICY ISSUE

(NEGATIVE CONSENT)

June 10, 1996

SECY-96-124

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: FINANCIAL ASSURANCE FOR GENERAL ATOMICS FACILITIES

9606180615 YAPP



POLICY ISSUE

(NEGATIVE CONSENT)

June 10, 1996

SECY-96-124

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: FINANCIAL ASSURANCE FOR GENERAL ATOMICS FACILITIES

PURPOSE:

[REDACTED]

SUMMARY:

[REDACTED]

Contact:
Robert Pierson, NMSS
415-7190
Seymour Weiss, NRR
415-2170

NOTE: * SENSITIVE PREDECISIONAL DELIBERATIVE INFORMATION LIMITED TO NRC UNLESS
THE COMMISSION DETERMINES OTHERWISE

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions E 415
FOIA- 96-336

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[REDACTED] ev4
GA has offered an alternative financial assurance plan that combines a partial parent company guarantee with contributions to a sinking fund, on the condition that the staff forbear from taking enforcement action against GA to require strict compliance with the financial assurance regulations.
[REDACTED] 205

BACKGROUND:

GA is the holder of NRC licenses SNM-696, R-38, and R-67 under 10 C.F.R. Parts 50 and 70 for its two TRIGA research reactors, hot cell facility, fuel fabrication facility, and other related facilities in San Diego, California. Since the relevant regulations requiring financial assurance for decommissioning at 10 C.F.R. §§ 50.75 and 70.25 became effective, GA has opted to provide a parent company guarantee from General Atomics Technologies Corporation (GATC) to provide financial assurance. In 1995, the amount of financial assurance provided by the parent guarantee was approximately [REDACTED] EX-4

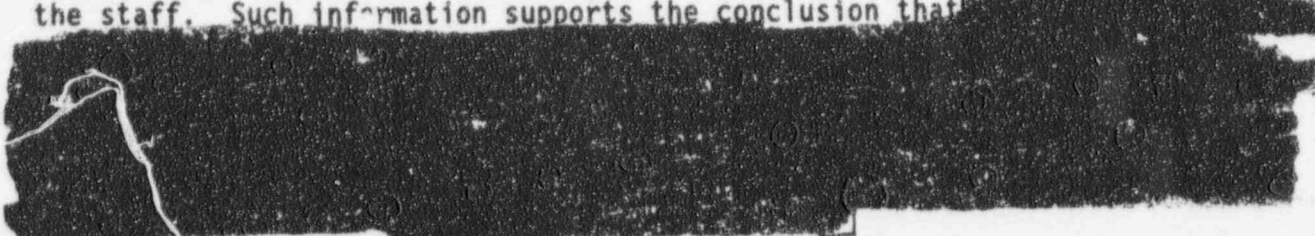
DISCUSSION:

Government contract work from the Department of Energy and Department of Defense has historically provided GA with a large portion of its revenues and income.
[REDACTED] 204

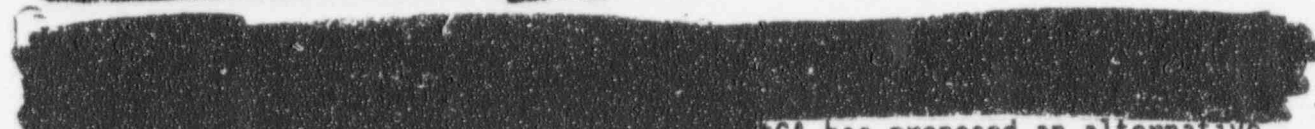
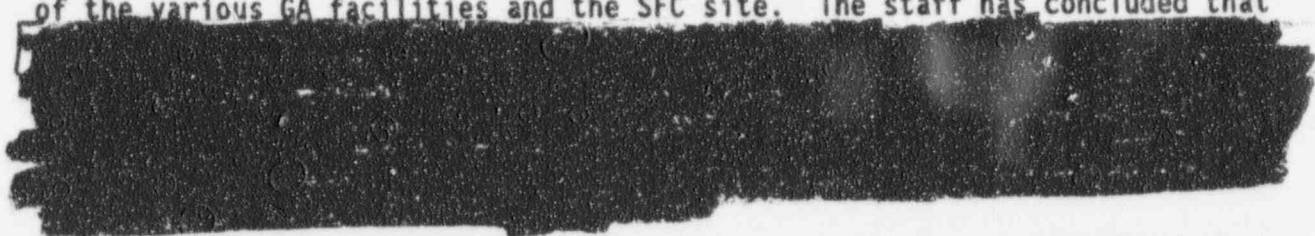
NOTE: SENSITIVE PREDECISIONAL DELIBERATIVE INFORMATION LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

GA is the third-tier parent of SFC, which operated a uranium conversion facility in Gore until 1992. Through subsidiary corporations, GA acquired SFC from Kerr McGee Corporation in 1988. GA did not then become nor has it since been a named licensee for the SFC facility. In October 1993, the staff issued an order, based on facts alleged therein, which asserted that SFC and GA were jointly and severally liable for decommissioning funding and financial assurance for the SFC facility. The order specifically directed GA to provide financial assurance in the amount of \$86 million for cleanup of the SFC site. Both GA and SFC requested a hearing on the order, and the matter is now before an Atomic Safety and Licensing Board in Docket 40-8027-EA. In August 1995, SFC entered into a settlement agreement with the staff, which was approved by the Licensing Board and is now being reviewed by the Commission. GA and the staff entered into good faith settlement negotiations beginning in September 1995, and have arrived at a tentative settlement, notwithstanding GA's legal position that the NRC lacks jurisdiction over GA to be able to sustain the order against it. In general terms, the tentative settlement with GA involves payment of a significant amount of cash to a trust fund over a period of years.

Confidential information concerning GA's finances has been made available to the staff. Such information supports the conclusion that



Given the limited resources of GA, the staff has evaluated the relative risks of the various GA facilities and the SFC site. The staff has concluded that



GA has proposed an alternative financial assurance plan for its San Diego facilities.

Because it does not wish to be exposed to further

¹ By presenting this paper to the Commission, the staff is not seeking any prejudgment of any matters in litigation, including any proposed settlement agreement that may be offered, concerning the Sequoyah Fuels Gore facility.

NOTE: SENSITIVE PREDECISIONAL DELIBERATIVE INFORMATION LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

litigation, however, GA seeks assurance from the staff prior to implementation of the alternative plan that an enforcement action seeking compliance with the financial assurance regulations will not be brought by the staff against GA.

The alternative plan provides for a limited parent company guarantee of

[REDACTED] coupled with the establishment of a sinking fund to which GA would contribute [REDACTED] per year. Contributions to the sinking fund would no longer be required once the sum [REDACTED]

[REDACTED] Should such estimate increase, GA's obligation to contribute to the sinking fund would increase accordingly. Withdrawals from the sinking fund to directly pay for decommissioning activities would be allowed up to a certain amount annually. [REDACTED]

GA is currently engaged in decommissioning its hot cell facility, to which the DOE is contributing [REDACTED] of the costs. The research reactor licenses are scheduled to expire in two and four years; by such time [REDACTED]

NOTE: SENSITIVE PREDECISIONAL DELIBERATIVE INFORMATION LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

CONCLUSION:

[REDACTED]

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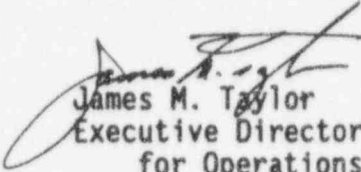
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[REDACTED]

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COORDINATION:

The Office of the General Counsel worked closely with staff in developing this paper and the attached proposed staff response and concurs in the planned approach.


James M. Taylor
Executive Director
for Operations

Attachments:

1. Letter from K. Asmussen to Document Control Desk (May 20, 1996) with enclosures (contains proprietary information)
2. Proposed staff response

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on June 24, 1996 that the Commission, by negative consent, assents to the action proposed in this paper.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 9, 1996

Dr. Keith E. Asmussen, Director
Licensing, Safety and Nuclear
General Atomics
3550 General Atomics Court
San Diego, CA 92121-1194

SUBJECT: FINANCIAL ASSURANCE FOR NRC LICENSES SNM-696, R-38, R-67
DOCKET NOS. 70-0734, 50-89, 50-163

Dear Dr. Asmussen:

This is in response to your letter dated May 20, 1996, concerning financial assurance for funding the decommissioning of the facilities located in San Diego that are the subject of the above-referenced licenses (San Diego facilities).

According to your submittal, the estimated costs to General Atomics (GA) of decommissioning the San Diego facilities has recently been revised upward to approximately [REDACTED] taking into account an expected contribution of funds from the Department of Energy. You have indicated that GA's parent company, GATC, [REDACTED] EX 4

[REDACTED] in light of their escalation and a tentative settlement of an ongoing proceeding involving GA and the staff concerning the Sequoyah Fuels Corporation facility in Gore, Oklahoma. Under the tentative settlement, GA would contribute significant funds towards the decommissioning of the Gore facility. GA has further stated that attempting to provide financial assurance by a method specified in the regulations other than a parent company guaranty [REDACTED]

GA has proposed in the alternative that it be permitted to provide financial assurance by combining a limited parent company guaranty in the amount of [REDACTED] and a newly established sinking fund to which funds would be contributed on an annual basis. The details of such proposal were outlined in Annex B to your May 20, 1996 letter. As a condition to offering the alternative proposal, GA would want the staff to exercise its enforcement discretion not to enforce strict compliance with the financial assurance regulations [REDACTED] under the circumstances described in the May 20, 1996 submittal and attachments thereto. EX 4

The staff has considered all of the information contained in your May 20, 1996 submittal and attachments thereto, as well as the letter referenced therein from you to the Document Control Desk, Attention A. Adams (Jan. 22, 1996) with enclosures. The staff has also reviewed GA's most recent consolidated financial statements, and other relevant information, and has evaluated the merits of attempting to enforce GA's compliance with the applicable financial assurance regulations, in light of the present facts and circumstances. The staff has concluded that for so long as GA implements and complies with GA's 42

Partial E-4p4

proposed alternative method of providing financial assurance for the San Diego facilities as specified in Annex B of GA's May 20, 1996 submittal, namely providing a parent company guaranty in the amount of [REDACTED] and establishing an external sinking fund under the terms and conditions contained in such Annex B, the staff will exercise its discretion and forbear from instituting an action against GA or its officers and directors to enforce compliance with the Commission's financial assurance regulations at 10 C.F.R. §§ 50.75 and 70.25 in connection with the San Diego facilities; provided, however, that should circumstances materially change such that GA's parent

[REDACTED] this forbearance shall cease; and provided further that GA has entered into and is subject to a settlement with the staff regarding Docket 40-8027-EA as described in the May 20, 1996 submittal.

If there are any questions concerning this letter, please contact Mr. Charles E. Gaskin, Office of Nuclear Material Safety and Safeguards, at (301) 451-8116, or Mr. Alexander Adams, Jr., Office of Nuclear Reactor Regulation, at (301) 415-1127.

Sincerely,

ORIGINAL SIGNED BY:

Seymour H. Weiss, Chief
Non-Power Reactors and Decommissioning
Project Directorate
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

ORIGINAL SIGNED BY:

Robert C. Pierson, Chief
Licensing Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket 70-734
License SNM-696

Docket 50-89, 40-8027, 50-163

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NAME	CGaskin	DAHoodley	TCox	See previous concurrence	SWeiss	RPierson	
DATE	7/ /96	7/ /96	7/ /96	7/ /96	7/9 /96	7/5 /96	

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