

FOIA — 97-66

RESPONSE TYPE

☒ FINAL (3rd) ☐ PARTIAL

DATE APR 25 1997

DOCKET NUMBER(S) (if applicable)

REQUESTER

Raju H. Patel

## 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) D 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) E 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 \$ 35.27☐ 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

The records identified on enclosed Appendices D and E are the remaining records subject to your request. Copies of Appendix D records are already publicly available at NRC's Public Document Room (PDR). I have enclosed information to assist you in obtaining these records directly from the PDR. Copies of Appendix E records are enclosed.

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

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APR 25 1997

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The fees for the processing of your request are noted below:

Professional Search - 4 hrs. 10 mins. @ \$33.67 per hr.	= \$140.28
Professional Review - 3 hrs. 5 mins. @ \$33.67 per hr.	= 103.81
Duplication - 107 pgs. @ \$0.20 per pg.	= 21.40

Total	\$265.49
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This completes NRC's action on your request.

APPENDIX D

DOCUMENTS MAINTAINED AT THE PDR

NUMBER	DATE	DESCRIPTION/ACC. NO.
1.	10/29/93	Letter to The Honorable Martin Hoke from Chairman Selin regarding radioactive contamination at Northeast Ohio Regional Sewer District, with enclosure, Acc. No. 9311170156.
2.	8/22/94	Letter to The Honorable John Glenn, from Chairman Selin regarding NRC response to GAO's report entitled "Nuclear Regulation - Action Needed to Control Radioactive Contamination at Sewage Treatment Plants," with enclosure, Acc. No. 9409070198.
3.	6/20/95	SECY-95-162 - Disposal of Radioactive Material into Sanitary Sewer Systems, Acc. No. 9507060225.

Re: FOIA-97-66

APPENDIX E

RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

NUMBER	DATE	DESCRIPTION/PAGES
1.	10/1/93	Letter to P. Olson from J. Blaha regarding NRC's response to questions, with enclosure, (19 pgs.).
2.	11/9/93	Letter to M. Fitzgerald from M. Malsch regarding NRC's response to questions, with enclosure, (7 pgs.).
3.	6/10/94	Backup Questions, 17, 18, and 23, for Commission Use, (3 pgs.).

# Patterson Associates, Incorporated



Freedom of Information  
Consultants

VIA FACSIMILE

February 21, 1997

FOIA/PA REQUEST

Case No: 97-0066  
Date Rec'd: 2-24-97  
Action Off: Rugh  
Related Case: \_\_\_\_\_

Mr. Russell Powell  
Chief - FOIA/LPDR Branch  
United States Nuclear Regulatory Commission  
Mail Stop T6D8  
Washington, D.C. 20555-0001

Dear Mr. Powell:

This letter is a request to you that under the Freedom of Information Act (FOIA), I would like to review all available Nuclear Regulatory Commission (NRC) associated documents on the following two issues:

1. Documentation regarding development of solubility criteria for liquid effluent releases to sanitary sewerage, as regulated under 10 CFR Part 20.
2. Documentation regarding the NRC's position concerning a municipality regulating radioactive discharges to the sanitary sewer on the basis of protecting economic interests. For example, see the enclosed November 9, 1993 NRC letter to Mr. Hugh McFadden, City Attorney, Laramie, Wyoming, communicating this position in response to the municipality's inquiry. Please include all NRC responses to such municipality inquiries.

If you have any comments or questions regarding the above, please call.

Cordially yours,

*Raju Patel*

Raju H. Patel  
Project Engineer

RHP/jg

Enclosure

cc: J. Patterson  
C. Petropoulou

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F.3.11

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20545-0001

NOV 09 1993

Hugh B. McFadden, Esq.  
Laramie City Attorney  
Corthell and King  
221 South Second Street  
P. O. Box 1147  
Laramie, Wyoming 82070

Dear Mr. McFadden:

In your letter to the NRC of September 9, 1993 you requested an expression of views on the following question: "Can a municipality lawfully regulate or prohibit the discharge of radioactive materials into its wastewater treatment system, with or without an industrial pretreatment program mandated by EPA?" We understand the context of your question to be a city plan to begin producing sludge in 1996, and the related facts that Laramie has a hospital with a nuclear medicine department and that the University of Wyoming does some research with radioisotopes.

By necessity our response has to be general, limited to the principles of law that govern this agency and its relationships with states and municipalities. The primary legal principle is that the Atomic Energy Act of 1954, as amended, occupies the field with respect to issues of radiation protection in the use of source, byproduct, and special nuclear material, as these terms are defined in the Act. If, however, the basis for the state or local governmental action is something other than the protection of workers and public from the health and safety hazards of regulated materials, the action is not preempted. See, e.g. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission, 461 U. S. 190 (1983). As a consequence of the Atomic Energy Act occupying the field dual Federal-State regulation of the radiation hazards associated with use of these materials is not allowed. See 10 C.F.R. 8.4 and 10 C.F.R. Part 150.

However the extension of these general Federal preemption principles to actions of State or Local government entities in their proprietary capacity (say as owners of POTWs) raises additional issues which have not been resolved definitely. More important here, however, is that if the city of Laramie were to have sound reasons, other than radiation protection, to require pretreatment of wastes from the hospital or university to eliminate or reduce radioactivity, such pretreatment would not fall afoul of the Atomic Energy Act. Thus, NRC regulations that allow users of regulated materials to discharge to sanitary sewers do not compel a waste water treatment operator to accept those radioactive materials. We note, however, that the materials regulated by this agency are exempted from regulation under the Federal Water



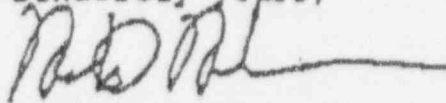
Pollution Control Act and the Resource Conservation and Recovery Act. Thus pretreatment to eliminate or reduce the regulated isotopes would not be required by these environmental statutes.

In January of 1994 new rules take effect in 10 C.F.R. Part 20 that will limit the discharge to sanitary sewer systems to only those licensed materials which are soluble in water or which are readily dispersible biological material (such as may be found in a university research laboratory), see 10 C.F.R. 20.2003. Finally, there is no limit on radioactivity that may be discharged to a sanitary sewer in excreta from patients undergoing medical diagnosis or therapy. You may wish to consult with the radiation safety officers of the hospital and university to gain an understanding of the technical characteristics of the isotopes used in these institutions and their fate in waste water treatment.

The problem of certain radioactive materials ending up in the sludges from waste water treatment, or in ash from the incineration of sludges, is well known to the staff of the NRC. A generic study is underway to understand the dimensions of the issue and whether it poses a particular health and safety matter that needs to be dealt with by more specific regulation. The Atomic Energy Act encourages the useful and beneficial uses of radioisotopes in medicine and research, at the same time the NRC is highly cognizant of the health risks to third parties that may result from such uses. We believe that our regulation is appropriately balanced between the need to protect the public from the undue hazards of the regulated materials and also to allow their beneficial use in a controlled manner.

I hope that this response will be helpful to you. If you have any further questions you may call either me at area code 301-504-1740, or Robert L. Fennor at area code 301-504-1643.

Sincerely yours,



Martin G. Kalsch  
Deputy General Counsel for  
Licensing and Regulation