Department of Energy
Idaho Operations Office
1955 Fremont Avenue
Idaho Falls, ID 83415

August 11, 2010

Josh Berman
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606

SUBJECT: FOIA Response (10-034) (ID-2010-01859-F) (OM-PA-10-056)

Dear Mr. Berman:

This is a final response from the Idaho Operations Office (DOE-ID), regarding your July 22, 2010, Freedom of Information Act (FOIA) request. In that letter you requested:

- Richard Boardman Emails
- Wood/Grubick Emails FY 2006
- Wood/Grubick Emails FY 2007
- Wood/Grubick Emails FY 2008
- Wood/Grubick Emails FY 2009
- INL CRADAs with Baard Energy, Ohio River Clean Fuels, LLC.

Most of the information sought in your request, specifically, the e-mails and attachments thereto, are not subject to the Freedom of Information Act because the information generated under BEA's CRADA work is generated under a subcontract, and the documents which BEA or its subcontractors may create or possess are not considered government records.

BEA maintains these documents as part of its subcontractor procurement system, and they are not considered government records under the DEAR 970.5204-3 – "Access To And Ownership of Records" clause of the contract with BEA. That clause provides that records relating to any procurement action by the contractor are considered the property of the contractor. The documents requested were generated by BEA or its subcontractor, and were under BEA's control and possession at the time of the FOIA request. These documents have not been transmitted to DOE, and remain in the control and possession of BEA. Therefore, the emails and attachments are not considered government records subject to the FOIA.

Please find the following enclosed CRADA documents that address your request for CRADA documents that are released to you in their entirety:

- Cooperative Research and Development Agreement (CRADA) between Batelle Energy Alliance, LLC and Baard Energy, LLC;

- A Department of Energy Idaho Operations Office review and approval letter for the CRADA;
- Modification No. 1 to Cooperative Research and Development Agreement between Batelle Energy Alliance, LLC and Baard Energy, LLC.

I am the authorizing official for purposes of determining to withhold information. You may appeal, pursuant to 10 C.F.R. 1004.8, the denial of information by the DOE. The appeal must be made within 30 calendar days of receipt of a letter denying any portion of the request. The appeal should be sent to the Director, Office of Hearings and Appeals, HG-1, U.S. L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615.

The written appeal, including the envelope, must clearly indicate that a Freedom of Information Act Appeal is being made. The appeal must contain all the elements required by 10 C.F.R. 1004.8. to the extent applicable. Judicial review will thereafter be available to you: (1) in the District of Columbia; (2) in the district where you reside; (3) in the district where your principal place of business is located; or (4) in the district where the DOE records are located. If you appeal, Please provide me a copy of the same.

I appreciate the opportunity to assist you with this matter. If you have any questions about this correspondence, please contact me at 208-526-5190.

Sincerely,

FOIA Officer

Enclosures