Department of Energy

Idaho Operations Office
1955 Fremont Avenue
Idaho Falls, ID 83415

June 24, 2010

National Resources Defense Council
Attn: Josh Berman
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606

SUBJECT: FOIA Response 10-014 (OM-PA-10-045)

Dear Mr. Berman:

This is a final response from the Idaho Operations Office (DOE-ID), regarding your January 5, 2010, Freedom of Information Act (FOIA) request. In that letter you requested:

- "Any records drafted, reviewed, or edited by INL or contractor of INL concerning any aspect or component of the ORCF Facility or the use of any technology at the ORCF Facility;
- "Any communications between INL or any employee or agent of INL, and Ohio River Clean Fuels, LLC (ORCF) or any employee or agent of ORCF, regarding any aspect or component of the ORCF Facility, or the use of any technology at the ORCF Facility; and
- "Any communications between INL or any employee or agent of INL, and Civil & Environmental Consultants, Inc., Black & Veatch, Uhde Gmbh, Synthroleum, and /or AMEC Paragon, or any employee or agent of any of those entities, regarding any aspect or component of the ORCF Facility, or the use of any technology at the ORCF Facility."

Upon further consideration of your FOIA request, it has been concluded that the requested information consists of documents generated under the Cooperative Research and Development Agreement (CRADA) between Battelle Energy Alliance and Baard Energy, and is exempt from release pursuant to Exemption 4 of the Freedom of Information Act because it consists of privileged and confidential commercial information constituting work done for others/clients, which is held in confidence. See, e.g., Judicial Watch, Inc. v. DOE, 310 F. Supp 2d 271, 308 (D.D.C. 2004) (holding that reports that "constitute work done for clients" are "'Commercial' in nature"), affirmed in part & reversed in part on other grounds, 412 F.3d 125 (D.C. Cir. 2005).

Further, to the extent that information generated by Uhde Gmbh and AMEC Geomatrix under subcontracts with BEA relates to CRADA work, such information would be exempt from release pursuant to Contract DE-AC07-05ID14517, Clause I.15, DEAR 970.5204-3, Access to and Ownership of Records, Section (b) 3, which states that, "Records relating to any procurement action by the contractor" are considered the property of the contractor and are therefore not

subject to the FOIA. It should be noted that documents previously provided to you constituted information that was readily available in the public domain and was not deemed by any of the parties to require protection. The remaining documents are readily related to the CRADA and are therefore subject to withholding pursuant to Exemption 4 as stated above.

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,

Clayton Ogilvie
FOIA Officer