

Exhibit D

Exhibit D

1

RECEIVED

MAR 29 2016



OFFICE OF OPEN RECORDS

RIGHT-TO-KNOW LAW ("RTKL")
APPEAL OF DENIAL, PARTIAL DENIAL, OR DEEMED DENIAL

Office of Open Records ("OOR")
Email: openrecords@pa.gov
Fax: (717) 425-5343

Commonwealth Keystone Building
400 North St., 4th Floor
Harrisburg, PA 17120-0225

Today's Date: March 29, 2016

Requester Name(s): Kendra L. Smith, Esq.

Address/City/State/Zip: 125 Technology Drive, Suite 202, Bailey Center I, Canonsburg, PA 15317

Email: ksmith@smithbutzlaw.com Phone/Fax: 724-745-5121 / 724-745-5125

Request Submitted to Agency Via: [X] Email [] Mail [] Fax [] In-Person (check only one)

Date of Request: February 1, 2016 Date of Response: March 9, 2016 [] Check if no response

Name of Agency: Pennsylvania Department of Environmental Protection - Northwest Region

Address/City/State/Zip: 230 Chestnut Street, Meadville, PA 16335

Email: N.A Phone/Fax: 814-332-6945 / 814-332-6344

Name & Title of Person Who Denied Request (if any): Staci Gustafson, Assistant Regional Director

I was denied access to the following records (REQUIRED. Use additional pages if necessary): 19 pages of responsive records were withheld and the records provided were redacted. The Position Statement attached hereto outlines the denial in greater detail.

I requested the listed records from the Agency named above. By signing below, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am also appealing for the following reasons (Optional. Use additional pages if necessary): See the attached Position Statement.

- [X] I have attached a copy of my request for records. (REQUIRED)
[X] I have attached a copy of all responses from the Agency regarding my request. (REQUIRED)
[X] I have attached any letters or notices extending the Agency's time to respond to my request.
[] I hereby agree to permit the OOR an additional 30 days to issue a final order.
[] I am interested in resolving this issue through OOR mediation. This stays the initial OOR deadline for the issuance of a final determination. If mediation is unsuccessful, the OOR has 30 days from the conclusion of the mediation process to issue a final determination.

Respectfully submitted, [Signature] (SIGNATURE REQUIRED)

You should provide the Agency with a copy of this form and any documents you submit to the OOR.

DEP Right-to-Know Law Record Request Form

Business Hours: 8:00 am - 4:30 pm (RTK requests received after 4:30 pm are considered received the next business day)
Mail to: DEP Open Records Officer ("AORO"), DEP/BOS, PO Box 8473, Harrisburg, PA 17105-8473.
Or Fax to: 717-705-8023
Or Email to: EP-DEP-RTK@pa.gov *Request sent to any other email will not be deemed a RTKL request.
Contact: 717-787-2043

Name of Requestor (or Anonymous): Kendra L. Smith, Esq.
Name of Company (or N/A): Smith Butz, LLC
Requestor's Street Address: 125 Technology Drive, Suite 202, Bailey Center I
Requestor's City/State/Zip Code: Canonsburg, PA 15317
Requestor's Telephone Number: (724) 745-5121
Requestor's Email Address: klsmith@smithbutzlaw.com

Records being requested (please sufficiently describe the record(s) requested so that they are identifiable to Department staff.):

Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP

Name of Individual / Company for records being requested (including former names)

Yeager Drill Site

Facility Name for requested records (if different than Company Name)

McAdams Road, Washington, PA 15301

Street Address (including zip code)

Washington

County(ies)

Amwell

Municipality(ies)

Additional information to assist with search and retrieval of responsive records (e.g. permit no.(s); dates or timeframe of records requested; programs of interest, geographic area):

Please see, "Attachment 1," attached hereto.

FORM OF RECORD PRODUCTION – check appropriate response:

REQUESTING FILE REVIEW ACCESS:

Seeking access, review and self copying of records is at a reduced cost of \$.15 per page. YES NO

REQUESTING DUPLICATION AND MAILING RECORDS:

Agency copying of records is at a cost of \$.25 per page YES NO

REQUESTING CERTIFICATION OF RECORDS:

I WANT DEP TO CERTIFY RECORDS (AT A COST OF \$5.00 PER REQUEST): YES

PENNSYLVANIA – OFFICE OF OPEN RECORDS
RIGHT-TO-KNOW REQUEST

“ATTACHMENT 1”

Any and all approvals, permits, licenses/licensures, applications for permits and/or licenses, reciprocity letters, reciprocity licenses, reciprocity agreements and/or reciprocity arrangements, including, but not limited to all licenses issued by the Pennsylvania Department of Environmental Protection (“PA DEP”) to Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP (hereinafter, “Protechnics”) for use, storage and possession of radioactive materials and/or other licensed material. Additionally, this request seeks any and all investigation reports, Notices of Violation(s), Consent Order and Agreement(s) issued to Protechnics by the PA DEP and/or between Protechnics and the PA DEP for any and all work or services performed by Protechnics at any natural gas well site in the Commonwealth of Pennsylvania. Included in this request is a request for copies of all Notices of Violation issued by the PA DEP to Protechnics, including but not limited to Notices of Violation dated 06/15/10, 01/28/10, 11/26/13, 09/13/13 and 10/14/13, Violation Numbers 677913, 677915, 677914, 682834, 682833, 682829, 682835 and all corresponding inspection reports, field notes and other related writings. Further, this request seeks any and all Consent Order and Agreements between the PA DEP and Protechnics, including, but not limited to, Consent Orders and Agreements dated November 2, 2013 and November 2, 2010.

Additionally, this request includes a request for copies of all enforcement activity taken by the PA DEP against Protechnics, including but not limited to Enforcement ID Number 305057, 259202 and 263973, as well as all inspection reports completed by the PA DEP regarding Protechnics, including, but not limited to, Inspection ID Numbers 1891418, 1919964, 2147772, 2204156 and 2221258.

This request further seeks any and all Radioactive Tracer Well Site Agreements made between Protechnics and any well site operator(s) for each and every well traced in the Commonwealth of Pennsylvania that is or was submitted to the PA DEP, including, but not limited to, the April 7, 2013 Radioactive Tracer Well Site Agreement between Protechnics and a well operator.

In addition to the above, this request seeks any and all notifications submitted to the PA DEP by Protechnics or the associated operator or subcontractor regarding Protechnics confirmation that licensed material, including, but not limited to, radioactive material, was returned to the surface at any well site in which Protechnics operated/performed work or services in the Commonwealth of Pennsylvania.

Additionally, this request seeks any and all documents, correspondence, e-mails and any other communication(s) between Protechnics and the PA DEP and/or Range Resources and the PA DEP regarding Protechnics and any and all work/services performed in the Commonwealth of Pennsylvania by Protechnics.

Further, this request seeks any and all MSDS/SDS (material data safety sheets and safety data sheets) in the possession of the PA DEP regarding any and all products utilized by Protechnics at

any well site in Pennsylvania, including, but not limited to, all MSDS/SDS for Protechnics Radioactive Tracer Products, as well as any and all Chemical Frac Tracer ("CFT") products, including, but not limited to, CFT 1000, CFT 1100, CFT 1200, CFT 1300, CFT 2000, CFT 2100, CFT 1900, CFT 1700.



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

March 9, 2016

CERTIFIED MAIL NO. 91 7199 9991 7033 8586 4259

Kendra L. Smith, Esquire
Smith Butz, LLC
125 Technology Drive, Suite 202, Bailey Center 1
Canonsburg, PA 15317

Re: Right-to-Know Request Numbers: 1400-16-071 (CO), 4100-16-027 (SE), 4200-16-023 (NE), 4300-16-019 (SC), 4400-16-010 (NC), 4500-16-018 (SW), **4600-16-029(NW)**

Dear Attorney Smith:

On February 1, 2016, the open-records officer of the Department of Environmental Protection (Department) received your written request for records and assigned it the tracking numbers listed above. Due to the nature of this request it was assigned to the Department's Central Office (CO), and to the Department's Southeast (SE), Northeast (NE), Southcentral (SC), Northcentral (NC), Southwest (SW), and Northwest (NW) Regional Offices. Each Office has its own tracking number under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 (RTKL).

The Department's Northwest Regional Office is responding to your request under the RTKL on its own behalf. Under separate covers, you will receive the final responses from the other assigned Offices.

Your request is, as follows verbatim:

- Any and all approvals, permits, licenses/licensures, applications for permits and/or licenses, reciprocity letters, reciprocity licenses, reciprocity agreements and/or reciprocity arrangements, including, but not limited to all licenses issued by the Pennsylvania Department of Environmental Protection ("PA DEP") to Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP (hereinafter, "Protechnics") for use, storage and possession of radioactive materials and/or other licensed material. Additionally, this request seeks any and all investigation reports, Notices of Violation(s), Consent Order and Agreement(s) issued to Protechnics by the PA DEP and/or between Protechnics and the PA DEP for any and all work or services performed by Protechnics at any natural gas well site in the Commonwealth of Pennsylvania. Included in this request is a request for copies of all Notices of Violation issued by the PA DEP to Protechnics, including but not limited to Notices of Violation dated 06/15/10, 01/28/10, 11/26/13, 09/13/13 and 10/14/13, Violation Numbers 677913, 677915, 677914, 682834, 682833, 682829, 682835 and all corresponding inspection reports, field notes and other related writings. Further, this request seeks any and all Consent Order and

Agreements between the PA DEP and Protechnics, including, but not limited to, Consent Orders and Agreements dated November 2, 2013 and November 2, 2010.

- Additionally, this request includes a request for copies of all enforcement activity taken by the PA DEP against Protechnics, including but not limited to Enforcement ID Numbers 305057, 259202 and 263973, as well as all inspection reports completed by the PA DEP regarding Protechnics, including, but not limited to, Inspection ID Numbers 1891418, 1919964, 2147772, 2204156 and 2221258.
- This request further seeks any and all Radioactive Tracer Well Site Agreements made between Protechnics and any well site operator(s) for each and every well traced in the Commonwealth of Pennsylvania that is or was submitted to the PA DEP, including, but not limited to, the April 7, 2013, Radioactive Tracer Well Site Agreement between Protechnics and a well operator.
- In addition to the above, this request seeks any and all notifications submitted to the PA DEP by Protechnics or the associated operator or subcontractor regarding Protechnics confirmation that licensed material, including, but not limited to, radioactive material, was returned to the surface at any well site in which Protechnics operated/performed work or services in the Commonwealth of Pennsylvania.
- Additionally, this request seeks any and all documents, correspondence, e-mails and any other communication(s) between Protechnics and the PA DEP and/or Range Resources and the PA DEP regarding Protechnics and any and all work/services performed in the Commonwealth of Pennsylvania by Protechnics.
- Further, this request seeks any and all MSDS/SDS (material data safety sheets and safety data sheets) in the possession of the PA DEP regarding any and all products utilized by Protechnics at any well site in Pennsylvania, including, but not limited to, all MSDS/SDS for Protechnics Radioactive Tracer Products, as well as any and all Chemical Frac Tracer ("CFT") products, including, but not limited to, CFT 1000, CFT 1100, CFT 1200, CFT 1300, CFT 2000, CFT 2100, CFT 1900, CFT 1700.

On February 3, 2016, you modified your request by email to Assistant Counsel Edward Stokan of the Department's Southwest Regional Office, to include all drill sites in the Commonwealth including, but not limited to, the Yeager Drill site.

An initial response to your request was due on or before February 8, 2016. On that date, you were notified that the Department required an additional 30 days, until March 9, 2016, to respond to your request. A copy of your request, and your e-mail message, dated February 3, 2016,

modifying your request, are enclosed and incorporated in full into this final response for the Department's Northwest Regional Office.

Your request is granted in part and denied in part.

Except as described below, your request is granted for records that the Department's Northwest Regional Office has in its possession, custody, or control. These records are enclosed and cover 10 pages of paper records. In accordance with Department policy, no fee has been charged because of the limited number of pages.

With respect to those records for which the Department's NW Regional Office is denying your request, the records are either exempt from production under Section 708 of the RTKL, 65 P.S. § 67.708, or protected by a privilege. Section 305 of the RTKL provides that records shall not be presumed to be public records if they are exempt under section 708 or protected by a privilege. 65 P.S. § 67.305(a) and (b).

The Department's Northwest Regional Office is withholding a total of 19 pages for the following legally permissible reasons:

Public Safety and Security.

Records containing information about radioactive materials cannot be released to the public for public safety and security reasons. A radioactive materials license, related complaint, incident report, inspection report, and any notice of violation regarding radioactive materials is exempt from disclosure under multiple provisions of the RTKL. Disclosing the contents of these records would reveal specific information pertaining to the nature and location of radioactive materials.

Pursuant to Section 708(b)(2) of the RTKL, 65 P.S. § 67.708(b)(2), a record is exempt from access by a requester if the record is "maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity"

Furthermore, Section 708(b)(3) of the RTKL, 65 P.S. § 67.708(b)(3), provides that a record is exempt from access by a requester if disclosure of the record "creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, [or] infrastructure"

The disclosure of a license's contents, incident report, and any inspection report could reasonably lead to public safety risks. The license and reports provide detailed information about the specific location and the security measures taken to protect radioactive materials. Moreover, radioactive materials files generally contain information identifying radioactive source possessed, the quantity or type of source, activity of the source, location of the source, identity of individuals authorized to have access to or use of the source, and similar sensitive information. Information contained within these files would give a determined adversary the means to actually do harm to others.

An individual could utilize the information in the license and reports to unlawfully obtain the radioactive materials for illicit purposes thus creating a major security and health breach. If an individual with criminal intent obtained these materials or should an individual re-publish the information contained within a license and reports which was subsequently obtained by someone with criminal intent, the public's health and safety could be severely compromised.

The Northwest Regional Office has withheld 19 pages of records that would otherwise be responsive to your request. The information of concern within these records specifically includes the license number, licensees' names, physical addresses, employee identities or information, types of sources, quantities of sources, locations of sources, names of authorized users, contact names at the site, inspection reports, Department staff who have knowledge of the sources, and documentation of security controls implemented at the site to prevent unauthorized access to the sources.

Personal Identification Information.

The RTKL exempts personal identification information from disclosure. 65 P.S. § 67.708(b)(6). Personal identification information includes, but is not limited to a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number, or other confidential personal identification number.

The Northwest Regional Office has withheld 14 pages of records that would otherwise be responsive to your request. The information of concern within these records includes Elk Waste Services employee's driver's license number and Department employees' internal telephone numbers.

Section 708(b)(6)(a) of the RTKL, 65 P.S. § 67.708(b)(6)(a), lists what constitutes personal identification information. Based on the types of information listed, it clearly means information that is unique to a particular individual or which may be used to identify or isolate an individual from the general population. It is information which is specific to the individual, not shared in common with others, and which makes an individual distinguishable from another. *Delaware County v. Schaefer*, 45 A.3d 1149, 1153 (Pa. Cmwlth. 2011).

This rationale of telephone numbers being specific to an individual and thus being deemed personal extends to government-issued "personal" cellular telephones, as well as assigned personal telephone extensions. The fact that government business may be discussed over an employee's government-issued personal cellular telephone does not make that telephone any less "personal" within the meaning of the RTKL. *Office of the Governor v. Raffle*, 65 A.3d 1105, 1111 (Pa. Cmwlth. 2013). Personal does not mean that it has to involve a public official's "personal affairs" but that it is personal to that official in carrying out public responsibilities. *City of Philadelphia v. Philadelphia Inquirer*, 52 A.3d 456, 461 (Pa. Cmwlth. 2012).

Both government issued telephone numbers and direct desk telephone extensions are clearly personal to that official for carrying out the duties of Commonwealth employment. The same

March 9, 2016

analysis applies to government issued personal email messages. Consequently, as personal identification information, it is appropriate for the Department to withhold these records. *See also Dep't of Public Welfare v. Clofine*, 2014 WL 688127 (Pa. Cmwlth. February 20, 2014).

You have a right to appeal this response in writing to: Executive Director, OOR, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response, and send to the OOR:

- 1) all Department responses;
- 2) your request, as modified; and
- 3) the reason(s) why you think the Department is wrong in its response.

Also, the OOR has an appeal form available on the OOR website at:
<http://www.openrecords.pa.gov/Using-the-RTKL/Pages/RTKLForms.aspx#.Voa6lRwo7X5>.

Sincerely,



Staci Gustafson
Assistant Regional Director

cc: RTK Attorneys and Staff (via e-mail)

Enclosures



DEP Right-to-Know Law Record Request Form

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Contact: 717-787-2043

Name of Requestor (or Anonymous): Kendra L. Smith, Esq.
Name of Company (or N/A): Smith Butz, LLC
Requestor's Street Address: 125 Technology Drive, Suite 202, Bailey Center I
Requestor's City/State/Zip Code: Canonsburg, PA 15317
Requestor's Telephone Number: (724) 745-5121
Requestor's Email Address: ksmith@smithbutzlaw.com

Records being requested (please sufficiently describe the record(s) requested so that they are identifiable to Department staff.):

Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP
 Name of Individual / Company for records being requested (including former names)

Yeager Drill Site
 Facility Name for requested records (if different than Company Name)

McAdams Road, Washington, PA 15301
 Street Address (including zip code)

Washington
 County(ies)

Amwell
 Municipality(ies)

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I WANT DEP TO CERTIFY RECORDS (AT A COST OF \$5.00 PER REQUEST): YES

PENNSYLVANIA – OFFICE OF OPEN RECORDS
RIGHT-TO-KNOW REQUEST

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Kerlik-Beers, Jennifer

From: Stokan, Edward
Sent: Wednesday, February 03, 2016 2:58 PM
To: EP, Right-to-Know
Cc: Barnett, Jacqueline Conforti (DEP); Cantwell, John
Subject: FW: February 1, 2016 RTKL Request re ProTechnics 1400-16-071, 4100-16-0027, 4200-16-023, 4300-16-019, 4400-16-010, 4500-16-018, 4600-16-029

From: Kendra L. Smith [mailto:klsmith@smithbutzlaw.com]
Sent: Wednesday, February 03, 2016 2:50 PM
To: Stokan, Edward
Subject: RE: February 1, 2016 RTKL Request re ProTechnics

It is for all drill sites in the Commonwealth including but not limited to the Yeager Drill site as indicated in attachment 1. Thank you.

Kendra L. Smith, Esq.
Smith Butz, LLC
Attorneys at Law
125 Technology Drive, Suite 202
Bailey Center I, Southpointe
Canonsburg, PA 15317
Phone: (724) 745-5121
Fax: (724) 745-5125
Email: klsmith@smithbutzlaw.com
Web: www.smithbutzlaw.com

CONFIDENTIALITY NOTICE: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please notify the sender by return email and delete this email from your system. Thank you.

----- Original Message -----

Subject: February 1, 2016 RTKL Request re ProTechnics
From: "Stokan, Edward" <estokan@pa.gov>
Date: Wed, February 03, 2016 2:46 pm
To: "klsmith@smithbutzlaw.com" <klsmith@smithbutzlaw.com>

Your February 1, 2016 Right-to-Know Law request indicates that the "Facility name for requested records" is the "Yeager Drill Site."

However, your Attachment 1 indicates that you are seeking responsive records as to any natural gas well site in the Commonwealth.

Can you please confirm whether you seek records pertaining only to the Yeager Drill Site or pertaining to all gas well sites throughout the Commonwealth?

Edward S. Stokan | Assistant Counsel
Department of Environmental Protection | Office of Chief Counsel
Southwest Regional Office
400 Waterfront Drive | Pittsburgh, PA 15222
Phone: 412.442.4262 | Direct Phone: 412.442.4249 | Fax: 412.442.4274
www.depweb.state.pa.us

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHWEST REGIONAL OFFICE

APC
Anita Jones
Godd FC

August 4, 2010

Mr. Chester Cheatle
Elk Waste Services, Inc.
134 Sara Road
Saint Marys, PA 15857

Re: Consent Assessment of Civil Penalty

Dear Mr. Cheatle:

Please find enclosed a copy of the executed Consent Assessment of Civil Penalty (CACP) for your records.

Thank you for your cooperation in this matter.

If you have any questions concerning the CACP or any waste related issue please feel free to contact me at 814.332.6829.

Sincerely,

John R. Crow
Solid Waste Supervisor
Waste Management

Enclosure

cc: NWRO
Enf. File

JRC:jb

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Elk Waste Services, Inc. : Solid Waste management Act
134 Sara Road :
Saint Marys, PA 15857 :

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty is entered into this 3rd day of August 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Elk Waste Services, Inc. ("Elk Waste Services").

The Department has found and determined the following:

- A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§6018.101-6018.1003 ("Solid Waste Management Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §§510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").
- B. Elk Waste Services is a "person," as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103, and is engaged in the collection and/or transportation of Solid Waste within the Commonwealth of Pennsylvania.
- C. On May 21, 2010, Elk Waste Services transported contaminated liner material and other cleanup waste from a gas well drilling site in Shippen Township, Cameron County to McKean County Landfill in Sergeant Township, McKean County, Pennsylvania.
- D. The contaminated liner material and other cleanup waste ("Waste") noted in Paragraph C, above, is "solid waste" and "residual waste" as those terms are defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103, and 25 Pa. Code §287.1.

E. On May 21, 2010, Elk Waste Services transported the Waste to McKean County Landfill for disposal in a vehicle that did not have a contingency plan to minimize and abate a discharge of residual waste in violation of 25 Pa. Code §299.216(d), and the vehicle did not have a daily operational record in violation of 25 Pa. Code §299.219(a).

F. On May 21, 2010, Elk Waste Services transported the Waste to McKean County Landfill without McKean County Landfill having a permit or written approval from the Department that expressly allowed the disposal of the Waste in violation of Section 303(a) of the Solid Waste Management Act, 35 P.S. §6018.303(a), and 25 Pa. Code §299.215(b).

G. On June 14, 2010, the Department issued Elk Waste Services a Notice of Violation for the violations identified in Paragraphs E, and F, above.

H. The violations described in Paragraphs E, and F, above, constitute unlawful conduct under Section 610(4) of the Solid Waste Management Act, 35 P.S. §6018.610(4); and subjects Elk Waste Services to a claim of civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605.

I. As of the date of this Consent Assessment of Civil Penalty, Elk Waste Services has corrected all of the violations identified in Paragraphs E, and F, above.

After full and complete negotiation of all matters set forth in this Consent Assessment of Civil Penalty and upon mutual exchange of the covenants herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Elk Waste Services as follows:

1. *Assessment.* In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605, the Department hereby assesses a civil penalty of \$500, which Elk Waste Services hereby agrees to pay.

2. *Civil Penalty Settlement.* Upon signing this Consent Assessment of Civil Penalty, Elk Waste Services shall pay the civil penalty assessed in Paragraph 1. The payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs E, and F, above, for the date set forth in Paragraphs E, and F, above. The payment shall be by corporate check or the like, made payable to Commonwealth of Pennsylvania and sent to John Crow, Solid Waste Supervisor, 230 Chestnut Street, Meadville, PA 16335.

3. *Findings.*

(a) Elk Waste Services agrees that the Findings in Paragraphs A through I are true and correct and, in any matter or proceeding involving Elk Waste Services and the Department, Elk Waste Services shall not challenge the accuracy or validity of these Findings.

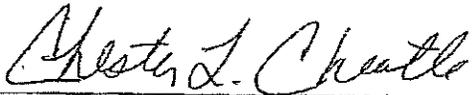
(b) The Parties do not authorize any other persons to use the Findings in this Consent Assessment of Civil Penalty in any matter or proceeding.

4. *Reservation of Rights.* The Department reserves all other rights with respect to any matter addressed by this Consent Assessment of Civil Penalty, including the right to require abatement of any conditions resulting from the events described in the Findings. Elk Waste Services reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this Consent Assessment of Civil Penalty.

IN WITNESS WHEREOF, the Parties have caused this Consent Assessment of Civil Penalty to be executed by their duly authorized representatives. The undersigned representative of Elk Waste Services certifies, under penalty of law, as provided by 18 Pa.C.S.A. §4904, that they are authorized to execute this Consent Assessment of Civil Penalty on behalf of Elk Waste Services, that Elk Waste Services consents to the entry of this Consent Assessment of Civil Penalty as an ASSESSMENT of the Department; that Elk Waste Services hereby knowingly waives any right to a hearing under the statutes referenced in this Consent Assessment of Civil Penalty; and that Elk Waste Services

· knowingly waives their right to appeal this Consent Assessment of Civil Penalty, and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa.C.S.A. §103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Elk Waste Services's attorney certifies only that the assessment has been signed after consulting with counsel.

FOR ELK WASTE SERVICES, INC.:



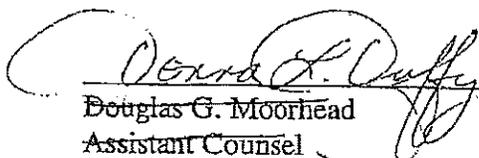
Name Chester L. Cheattle
Title PRESIDENT

Name
Attorney For Elk Waste Services, Inc.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Todd Carlson
Regional Manager
Waste Management Program
Northwest Region



Douglas G. Moorhead
Assistant Counsel

DONNA L. DUFFY
Regional Counsel

cc'd. Jeremy Preston

Anita Stainbrook
Jeremy Preston

Commonwealth of Pennsylvania
230 Chestnut Street
Meadville PA 16335

DATE: July 30, 2010

SUBJECT: Transmittal of Settlement

TO: Jeremy Preston
Regional Business Manager

FROM: Anita Stainbrook
Operations Manager
Waste Management

PENALTY AMOUNT: \$500.00

FUND(S): Solid Waste Abatement Fund: Penalty Amount \$ 500.00

AND/OR

Waste Transportation Safety Account: Penalty Amount \$

VIOLATOR: Elk Waste Services, Inc.

ADDRESS: 134 Sara Road

CITY/STATE/ZIP: Saint Marys, PA 15857

ELK WASTE SERVICES, INC.

C/O CHESTER CHEATLE
134 SARA ROAD
ST. MARYS, PA 15857
(814) 834-6771

FIRST Commonwealth
First Commonwealth Bank
Care of Deposit Institution, PA 15700-0000

16876

DATE

60-682/433

Jul 27, 2010

AMOUNT

\$ *****\$500.00

Memo:

PAY Five Hundred and 00/100 Dollars
TO THE ORDER OF:

Commonwealth of Pennsylvania
John Crow, Solid Waste Supervi
230 Chestnut St
Meadville, PA 16335

Chester Cheatle
AUTHORIZED SIGNATURE

⑈016876⑈ ⑈043306826⑈ 0901 450863⑈

ogged

Security features. Details on back.



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHWEST REGIONAL OFFICE

July 23, 2010

Mr. Chester Cheatle
Elk Waste Services, Inc.
134 Sara Road
Saint Marys, PA 15857

Re: Consent Assessment of Civil Penalty

Dear Mr. Cheatle:

Enclosed is the proposed Consent Assessment of Civil Penalty (CACP) as discussed as a means of settlement for the violations revealed during the Department's investigation of the May 21, 2010, radiation incident at McKean County Landfill.

Please review the document carefully; sign and return the same within two weeks along with the penalty payment. Please leave the agreement date on page 1 blank. The agreement date will be filled in once all parties have signed the document. Upon receipt, I will obtain the remaining signatures and return a copy to you for your file.

Though there is a signature space indicated for your attorney, their signature is not required. Your attorney's signature only certifies the CACP was signed after consulting with counsel.

If you have any questions concerning this issue, please contact me.

Sincerely,

John R. Crow
Solid Waste Supervisor
Waste Management

Enclosure

cc: NWRO
J. Crow

JRC:lsf



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
WARREN DISTRICT OFFICE

Jack ...
...

June 14, 2010

NOTICE OF VIOLATION

Mr. Chester Cheatle
Elk Waste Services, Inc
134 Sara Rd.
Saint Marys, PA 15857

Re: Residual Waste Transportation Violations
McKean County Landfill
Sergeant Twp., McKean County

Dear Mr. Cheatle:

On May 21, 2010, you transported a load of residual waste from cleanup of a natural gas drilling site to McKean County Landfill in Sergeant Township, McKean County. The waste was generated by J-W Operating Company in Shippen Township, Cameron County.

A Department investigation has revealed that the load of waste was misrepresented as municipal demolition waste and that the transport was conducted without a residual waste manifest or other record that would document the type of waste being hauled, the generator of the waste and the disposal facility. Additionally, it was determined that neither J-W, nor Elk Waste, had obtained approval from the Department and McKean County Landfill for disposal of the residual waste.

Your actions described above constitute violation of 25 Pa. Code §§ 299.215(b) & (c) and 299.219(a) and also constitute violation of Sections 301, 303(a)(1) & (2) and 610(4) & (9) of the Solid Waste Management Act, 35 P.S. §§ 6018.301, 6018.303(a)(1) & (2), and 6018.610(4) and (9). Any violation of the Solid Waste Management Act subjects a person to a variety of enforcement actions, including civil and criminal penalties.

This Notice of Violation is neither an order nor any other final action of the Department of Environmental Protection. It neither imposes nor waives any enforcement action available to the Department under any of its statutes. If the Department determines that an enforcement action is appropriate, you will be notified of the action.

If you have any questions concerning this matter, please contact me at the above address or telephone number.

Sincerely,

Richard A. Sheriff

Richard A. Sheriff
Solid Waste Specialist
Waste Management Program

RECEIVED

JUN 16 2010

ENVIRONMENTAL PROTECTION
NORTHWEST REGIONAL OFFICE

cc: [redacted]
WDO

RAS:br

Carlson, Todd

From: Carlson, Todd
Sent: Tuesday, November 16, 2010 9:57 AM
To: Burch, Kelly; Gustafson, Staci; Lobins, Craig
Cc: Wozniak, Gary
Subject: FW: Protechnics COA
Attachments: ① ProTechnics COA.pdf

I'm sending this to let you know that our Rad Protection folks signed a CO&A with ProTechnics over the incident at Rustick landfill this spring that set off their rad meter. The CO&A was for \$29,000. The event was initiated with a flowback event which brought the radioactive tracer beads to the surface and the eventual transfer of the radioactive material to McKean County Landfill. ProTechnics is the company licensed to use the radioactive material at well sites. This sounds like a potential source of exposure for our well inspectors at the well sites. Maybe Gary and Craig will want to include something related to this in the 8 hour refresher...at least for O&G staff(?).

-----Original Message-----

From: Stainbrook, Anita
Sent: Tuesday, November 16, 2010 9:10 AM
To: Crow, John; Sheriff, Richard
Cc: Carlson, Todd; Fair, Joel
Subject: FW: Protechnics COA

Fyi. Rad followed through on penalty with ProTechnics.

-----Original Message-----

From: Forney, Lisa
Sent: Monday, November 15, 2010 10:12 AM
To: Brennan, Patrick; Stainbrook, Anita
Cc: Yusko, James (DEP); Derstine, Terry; Brown, Donald P.; Craig, Bridget; Leskosky, John; Cooley, Marc B; Means, Jennifer; Forney, Lisa; Deman, Joseph
Subject: Protechnics COA

I would like to share of copy of our executed COA with ProTechnics. If you have any questions or wish to discuss, please let me know.

As a side note to Pat....

The efforts to date are getting attention in the industry. I just received a phone call from ProTechnics. They are very concerned that the well owner/operator (JW Operating) was held accountable. I told them that NW's Waste Program also collected a penalty from the transporter. I reminded them that when this occurred previously we issued an NOV. However, it happened again..... further action was warranted. I guess that they will get used to it and hopefully do a better job in the future. Just out of curiosity, would you be willing to share a copy of your CACP?

Lisa A. Forney | Environmental Protection Compliance Specialist
Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue | Harrisburg, PA 17110.8200
Phone: 717.705.4898 | Fax: 717.705.4710
www.depweb.state.pa.us

Program Managers' Conference Call

Wednesday, June 16, 2010

9:30 – 11:30 am

MINUTES

Participants

- CO: Steve Socash, Laura Henry, Joe Sieber, Renee Bartholomew (BWM)
Dave Allard, Jim Barnhart (BRP)
- SE: Joe Feola, Jim Wentzel
- NE: Bill Tomayko, Tracey McGurk
- SC: John Oren, John Spang
- NC: Pat Brennan
- SW: Mike Forbeck, Diane McDaniel
- NW: Todd Carlson, Joel Fair

Topics Discussed

- o Next meeting: Thursday, September 9, 2010, RCSOB 14th floor Large Conference Room; face-to-face meeting directly after the SWANA/PWIA Conference
- o Iridium-192 at Rustick LF & NORM/TENORM Issues (see associated e-mail)
Dave Allard discussed this case and additional NORM/TENORM issues associated with disposal of frac fluid at MWLF's. Rustick had a hit of Iridium-192 in waste generated at an Oil & Gas well in which the drilling was traced by ProTechnics, a company out of Texas that utilizes Iridium-192 beads for tracing the efficiency of a well fracture. ProTechnics is currently the only company utilizing this technology in PA, and the Department has come across some compliance issues concerning disposal of the resulting waste. ProTechnics' license allows for in-situ decay on site with subsequent disposal at a LF; however, it has been discovered that drill cuttings may have been improperly managed. RP is currently seeking to take enforcement action against ProTechnics, and recent WM inspections will probably result in enforcement action by that program as well.

In general, Radium has been an issue; it has also been found in the solid component of the frac waste. It is OK for a MWLF to dispose of this material under a BRP exemption, and Regional WM staff has the ability to approve its disposal. BRP requirements include maintenance of a spreadsheet of loads containing TENORM for tracking purposes. It is important that WM and RP continue to coordinate with each other on these issues (enforcement actions, handling for disposal, etc.) and that WM keeps RP in the loop when it sees new sources of TENORM coming in for disposal.



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

February 8, 2016

VIA EMAIL

Kendra L. Smith, Esquire
Smith Butz, LLC
125 Technology Drive, Suite 202, Bailey Center 1
Canonsburg, PA 15317
klsmith@smithbutzlaw.com

Re: Right-to-Know Request Numbers: 1400-16-071 (CO), 4100-16-0027 (SE), 4200-16-023 (NE), 4300-16-019 (SC), 4400-16-010 (NC), 4500-16-018 (SW), 4600-16-029 (NW)

Dear Attorney Smith:

On February 1, 2016, the open-records officer of the Department of Environmental Protection (Department) received your written request for records and assigned it the tracking numbers listed above. The subject of your request requires its assignment to the Department's Central Office (CO) and the Southeast (SE), Northeast (NE), Southcentral (SC), Northcentral (NC), Southwest (SW), and Northwest (NW) Regional Offices. Each office has its own tracking number and may respond separately to your request for records in their possession. For purposes of this letter, the Department's CO is initially responding on behalf of all assigned offices under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 (RTKL).

You requested records for Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP located at the Yeager Drill Site, McAdams Road, Washington, Pennsylvania. You are seeking:

- Any and all approvals, permits, licenses/licensures, applications for permits and/or licenses, reciprocity letters, reciprocity licenses, reciprocity agreements and/or reciprocity arrangements, including, but not limited to all licenses issued by the Department to Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP (hereinafter, "Protechnics") for use, storage and possession of radioactive materials and/or other licensed material. Additionally, this request seeks any and all investigation reports, Notices of Violation(s), Consent Order and Agreement(s) issued to Protechnics by the Department and/or between Protechnics and the Department for any and all work or services performed by Protechnics at any natural gas well site in the Commonwealth of Pennsylvania. Included in this request is a request for copies of all Notices of Violation issued by the Department to Protechnics, including but not limited to Notices of Violation dated June 15, 2010, January 28, 2010, November 26, 2013, September 13, 2013 and October 14, 2013, Violation Numbers 677913, 677915, 677914, 682834, 682833, 682829, 682835 and all corresponding inspection reports, field notes and other related writings. Further, this request seeks any and all Consent Order and Agreements between the Department and Protechnics, including, but not limited to, Consent Orders and Agreements dated November 2, 2013 and November 2, 2010.

- Copies of all enforcement activity taken by the Department against Protechnics, including but not limited to Enforcement ID Numbers 305057, 259202 and 263973, as well as all inspection reports completed by the Department regarding Protechnics, including, but not limited to, Inspection ID Numbers 1891418, 1919964, 2147772, 2204156 and 2221258.
- Any and all Radioactive Tracer Well Site Agreements made between Protechnics and any well site operator(s) for each and every well traced in the Commonwealth of Pennsylvania that is or was submitted to the Department, including, but not limited to, the April 7, 2013, Radioactive Tracer Well Site Agreement between Protechnics and a well operator.
- Any and all notifications submitted to the Department by Protechnics or the associated operator or subcontractor regarding Protechnics confirmation that licensed material, including, but not limited to, radioactive material, was returned to the surface at any well site in which Protechnics operated/performed work or services in the Commonwealth of Pennsylvania.
- Any and all documents, correspondence, e-mails and any other communication(s) between Protechnics and the Department and/or Range Resources and the Department regarding Protechnics and any and all work/services performed in the Commonwealth of Pennsylvania by Protechnics.
- Any and all MSDS/SDS (material data safety sheets and safety data sheets) in the possession of the Department regarding any and all products utilized by Protechnics at any well site in Pennsylvania, including, but not limited to, all MSDS/SDS for Protechnics Radioactive Tracer Products, as well as any and all Chemical Frac Tracer ("CFT") products, including, but not limited to, CFT 1000, CFT 1100, CFT 1200, CFT 1300, CFT 2000, CFT 2100, CFT 1900, CFT 1700.

By your email on February 1, 2016, to Department Legal Counsel, Edward Stokan, you amended your RTKL request to the following:

- All drill sites in the Commonwealth, including but not limited to the Yeager Drill site as indicated in attachment 1 of the original request.

Under the RTKL, a written response to your request is due on or before February 8, 2016.

This is an interim response. Under the provisions of 65 P.S. §67.902(b)(2), you are hereby notified that your request is being reviewed for the reasons listed below and the Department will require up to an additional 30 days, until March 9, 2016, to issue a final response to your request.

- o Compliance with your request may require the redaction of certain information that is not subject to access under RTKL.
- o Your request is under legal review to determine whether a requested record is a "public record" for purposes of the RTKL.

February 8, 2016

- a The extent or nature of the request precludes a response within the required time period.

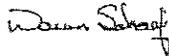
If you have requested an estimate of cost, the Department will only advise of prepayment costs if record production exceeds \$100.00. 65 P.S. § 1307(h). Otherwise, requested records will be produced and billed accordingly. If you are concerned about copying costs, you may wish to withdraw this request and conduct an informal file review. An informal file review allows self-copying at the reduced rate of \$.15 per page for standard size pages and provides you the opportunity to review and copy only those records you desire rather than all records the Department deems responsive to your request.

Further information about informal files reviews can be found at: <http://www.dep.pa.gov/Citizens/PublicRecords/Pages/Informal-File-Review.aspx#VpAasxwo7X4>. An informal file review does not preclude you from filing a RTKL request at a later date.

Lastly, if you elected to have records copied and mailed to you, the estimated or actual total for any fees owed when the record becomes available will be included in the Department's subsequent response. Prepayment is required before providing access when the estimated cost to fulfill a request exceeds \$100.00. 65 P.S. § 67.1307(h).

If you have any questions regarding this letter, please contact me.

Sincerely,



Dawn Schaefer
Agency Open Records Officer

cc: RTK CO Legal via email
RTK CO COM, OG, RP via email
RTK SE NE SC NC SW NW via email

[Print](#) | [Close Window](#)

Subject: FW: New Right-to-Know Law Record Request Received - Kendra L. Smith, Esq. (565)
From: "EP, Right-to-Know" <EP-DEP-RTK@pa.gov>
Date: Mon, Feb 01, 2016 10:53 am
To: "ksmith@smithbutzlaw.com" <ksmith@smithbutzlaw.com>
Cc: "EP, Right-to-Know" <EP-DEP-RTK@pa.gov>
Attach: RTKPDF.565.pdf

Attorney Smith-

Your attachment was not attached to your RTKL request. Please reply back to this email with your attachment. Thank you.

Agency Open Records Office
Department of Environmental Protection | Bureau of Office Services
Rachel Carson State Office Building
400 Market St | Hbg PA 17101
Phone: 717.787.2043 | Fax: 717.705.8023
www.dep.pa.gov

-----Original Message-----

From: ep-dep-rtk@pa.gov [mailto:ep-dep-rtk@pa.gov]
Sent: Monday, February 01, 2016 10:28 AM
To: EP, Right-to-Know
Subject: New Right-to-Know Law Record Request Received - Kendra L. Smith, Esq (565)

A new Right-to-Know Law Record Request has been Received. A copy of the request has been attached to this e-mail.

Subject: Your Right-to-Know Law Request Has Been Received by DEP
From: ep-dep-rtk@pa.gov
Date: Mon, Feb 01, 2016 10:28 am
To: ksmith@smithbutzlaw.com
Attach: RTKPDF.565.pdf

Thank you for your Right-to-Know Law submission that will be forwarded to the Agency Open Records Officer (AORO) for processing.

If you wish to modify a pending Right-to-Know Law request, do not complete another online form. A second online submittal will not modify your original request. Instead, please send an e-mail to ep-dep-rtk@pa.gov and we will assist you with modifying your original request.

Please note that your request is deemed received on the Department's next business day if:

- Your request was submitted after 4:30 p.m. Monday-Friday,
- Your request was submitted during a weekend,
- Your request was submitted on a holiday observance recognized by the Commonwealth, or
- Your request was submitted any time Executive Offices are closed as a result of weather or any other emergency.

The Department will contact you no later than five business days from the receipt of your request as to its status. If you have any further questions on this process, please visit the Department's webpage at:
http://www.portal.state.pa.us/portal/server.pl/community/public_records/19207

Thank you.

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**POSITION STATEMENT IN SUPPORT OF APPEAL TO DENIAL OF RTKL
REQUEST 4100-16-029 (NW)**

Kendra L. Smith, Esquire (the "Requester") submits this Position Statement in support of this Appeal of the Department of Environmental Protection's ("Department") March 9, 2016 denial of Right to Know Request 4600-16-029 (NW).

GENERAL BACKGROUND

On February 1, 2016, the Requester submitted a Right to Know Request ("Request") to the Department seeking records related to activities of Core Laboratories d/b/a ProTechnics, Division of Core Laboratories at the Yeager Drill site in Amwell Township, Washington County, Pennsylvania where ProTechnics was hired to inject radioactive tracers and to perform radioactive tracing associated with hydraulic fracturing. It appears that the Department transmitted this Request to its regional offices, each of which transmitted a response to the Requester. These responses were substantially the same but, because they were assigned separate Request Numbers by the Department, they will be appealed separately. This appeal relates only to the Department's Northwest region response, identified by the Northwest region as No. 4600-16-029 (NW).

DEPARTMENT RESPONSE TO REQUEST

The Department's Northwest region responded to the Request by granting the Request in part and denying the Request in part. The Department identified that it withheld nineteen (19) pages of responsive documents based on ill-founded exemptions under the Right to Know Law ("RTKL"). At the conclusion of its Response, the Department identified the Requester's right to file an appeal with the Office of Open Records and, that in such appeal, the Requester should identify the grounds for appeal.

Given the breadth of the Department's withholding of responsive records and the generality of the asserted exemptions, this Position Statement is intended to highlight the foundational implausibility of the Department's assertion of exemptions to withhold responsive records. Each of the Department's claimed exemptions will be addressed in order.

Public Safety & Security

In its Response, the Department identified that nineteen (19) pages of records responsive to the Request were withheld based on the Department's contention that these records were exempt from disclosure pursuant to Section 708(b)(2) of the RTKL and Section 708(b)(3) of the RTKL, which the Department categorized under the heading "Public Safety and Security". The Department's claim that these records are exempt from disclosure under these sections of the RTKL and the rationale asserted by the Department in support of this is grossly deficient.

In order for an agency to properly assert an exemption under Section 708(b)(2) of the RTKL, the agency bears the burden to demonstrate that "the disclosure of the records would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity." Carey v. Pennsylvania Department of Corrections, 61 A.3d 367, 374 (Pa. Commw. Ct. 2013). Evaluation of the "reasonably likely" test involves analysis of "the likelihood that disclosure would cause the alleged harm, requiring more than speculation." Id. at 375. The Department's assertion of this exemption under Section 708(b)(2) is mere unfounded speculation, which is made readily apparent by both the content of the Department's Response and the fact that other state and federal government agencies have published the same type of information on their websites that is nearly identical to what was sought in the instant Request and what is presumably being withheld by the Department.

With these “Public Safety and Security” exemptions, the Department engages in baseless fear-mongering to direct attention away from the deficiency of its Response. Amongst the doomsday scenarios presented by the Department in its Response are its contentions that:

- disclosure of licensure information could allow an individual to “utilize the information contained in the license and reports to unlawfully obtain the radioactive materials for illicit purposes thus creating a major security and health breach.” [Department Response at p. 4].
- “Disclosing the contents of these records would reveal specific information pertaining to the nature and location of radioactive materials.” [Department Response at p. 4].
- “Information contained within these files would give a determined adversary the means to actually do harm to others.” [Department Response at p. 4].

Essentially, the Department would have one believe that if it provided the records in its possession that are responsive to this Request, that cities across the Commonwealth would suddenly become black market weapons bazaars full of unsavory characters purchasing radioactive materials. These “scare tactics” are preposterous and are nothing more than ill-fated attempt to direct attention away from the fact the Department has not and cannot demonstrate, beyond mere conjecture, that it is reasonably likely that the disclosure of these records will jeopardize or threaten public safety, as is required by law. Carey, 61 A.3d at 374, 75. In fact, beyond using “buzzwords,” the Department’s Response does not even rise to mere speculation of potential harm to “Public Safety and Security.” A cursory examination of the Department’s assertion of this exemption, in concert with records that the Department provided *and* general background information, reveals the absurdity of the Department’s position that the “Public Safety and Security” exemption applies.

The Department’s contention that revealing “inspection reports” and “documentation of security controls” would undermine the “Public Safety and Welfare” is frustrated by information

that the Department has already provided. For example, the Department's Northwest Regional Office provided the minutes of a June 16, 2010 Program Managers' Conference Call in response to the Request. *See*, June 16, 2010 Program Managers' Conference Call minutes attached hereto as **Attachment 1**. This document identifies that the Rustick Landfill had a radiation alert for Iridium-192, in waste generated from a gas well where ProTechnics utilized Iridium-192 tracer beads. The minutes then continue that "ProTechnics is currently the only company utilizing this technology in PA." Quite clearly, information about "security controls" and the results of incidents have been provided by the Department. In light of this, the Department cannot credibly refuse to produce documents responsive to the Request by asserting an exemption that the Department itself has already ignored.

Moreover, the Northwest region provided Requestor with a Consent Assessment of Civil Penalty (CACP) issued to Elk Waste Services, Inc., for transporting radioactive material to McKean County Landfill without a proper permit(s). *See*, Consent Assessment of Civil Penalty(CACP), attached hereto as **Attachment 2**. Notably, however, the Northwest region failed to produce the CACP issued to ProTechnics and the oil and gas operator, JW Operating, for the exact same incident that occurred on May 21, 2010. *See*, email correspondence dated November 15-16, 2010, attached hereto as **Attachment 3**. Hence, the Northwest region improperly seeks to shield under the Public Safety and Security Exception the missing CACPs as to ProTechnics and JW Operating even though it already produced corresponding documentation supporting their existence. Additionally, the Northwest region has not demonstrated how production of these documents threatens public safety, preparedness or public protection activity.

While the above indicates that specific parts of the Department's withholding of responsive records based on "Public Safety and Security" are nonsensical, a more global view of the

Department's "Public Safety and Security" exemption claim reveals that its fundamental premise is fatally flawed. At the heart of the Department's "Public Safety and Security" claim is that disclosure of information related to radioactive licenses, complaints and violations would somehow jeopardize the public welfare. This contradicts the practice of the United States Nuclear Regulatory Commission ("NRC"), the federal agency entrusted with nuclear regulation and safety. Whereas information such as radioactivity license numbers, corporate addresses, types of radioactive sources, locations of use, etc. are guarded by the Department for fear of falling into the hands of unidentified miscreants, the NRC makes all of this information available on its website. *See, Attachment 4.*

On the front page of the NRC website, there is a "Search" feature where, if one enters "ProTechnics", five (5) pages of results are populated, with hyperlinks to a variety of documents. Searching through these free, publicly available files on the NRC website reveals a plethora of information about ProTechnics. For example, one entry on the NRC website involved an April 2014 event in Colorado involving ProTechnics:

Agreement State	Event Number: 50065
Rep Org: COLORADO DEPT OF HEALTH	Notification Date: 04/28/2014
Licensee: PROTECHNICS	Notification Time: 16:15 [ET]
Region: 4	Event Date: 04/04/2014
City: FRUITA State: CO	Event Time: 14:30 [MDT]
County:	Last Update Date: 04/28/2014
License #: CO 545-01	
Agreement: Y	
Docket:	
NRC Notified By: JAMES JARVIS	
HQ OPS Officer: DONALD NORWOOD	
Emergency Class: NON EMERGENCY	Person (Organization):
10 CFR Section:	MARK HAIRE (R4DO)
AGREEMENT STATE	FSME EVENTS RESOURCE (EMAT)

Event Text

AGREEMENT STATE REPORT - SCRAP FACILITY GATE ALARM

"On 04/04/14 at approximately 1430 MDT, the Colorado Radiation Program received phone notification of a scrap load that had been rejected at a recycling facility in Englewood, CO due to a gate radiation alarm. Scrap facility personnel performed surveys around the container using hand held survey instruments. Surveys indicated readings up to a maximum of 120 microrem/hour (Ludlum Model 3). Recycling facility staff indicated that the load would not be returned to the shipper until the following week and that the load/roll-off container was segregated onsite. The Colorado Radiation Program issued a DOT special permit and the scrap metal was returned to the originator, Baker-Hughes (Colorado License No. 678-01; 285 County Road 27, Brighton, CO 80603) on or about 04/11/14.

"Preliminary communications with Baker-Hughes personnel indicated that it performed well fracking work in mid-March 2014 and worked with another Colorado licensee - well logging tracer company, ProTechnics (Colorado License No. 545-01; 703 Greenway Drive, Fruita, CO 81521). Baker-Hughes is not authorized for tracer material use. Baker-Hughes requested that ProTechnics perform surveys on the rejected scrap load to determine whether the contamination was naturally occurring radioactive material, or tracer material. ProTechnics performed radiological surveys on or about 04/15/14 at the Baker-Hughes facility and determined that a small amount of tracer material remained in one component (a manifold removed from the pumping truck) of the scrap load. ProTechnics identified the tracer material as Iridium-192. The tracer material combined with approximately 10 lbs. of fracking sand was removed/decontaminated from the scrap component and was packaged by ProTechnics and returned to their facility in Fruita, CO for decay in storage. ProTechnics estimated the activity of Ir-192 tracer material in the component to be approximately 0.015 mCi. After receiving a preliminary written report from ProTechnics on 04/16/14, Colorado Radiation Program staff performed phone interviews of Baker-Hughes personnel and ProTechnics personnel.

"Colorado Radiation Program staff performed on-site verification surveys of the scrap load (post-decontamination) on 04/21/14. Surveys indicated that no radiation levels above instrument background were detected on the remaining decontaminated scrap.

"The Colorado Radiation Program is continuing to investigate the incident to determine further actions."

Readily apparent is the ProTechnics Colorado radioactive materials licensure number, the exact time and date of the incident, the type of incident, and the specific radiation source, an IR-192 tracer as well as the names of individuals reporting the incident. There are many other entries on the NRC website with similar specificity as to the identity of where, what and how specific radioactive tracers were used and mishandled.

When one examines the information that the NRC makes available on its own website, it is readily apparent that the scope of the Request is fairly encompassed within these documents. The Department cannot credibly claim that it withholds information for "Public Safety and Security" reasons when its federal counterpart makes this same information available, without

even any need for a Freedom of Information Act inquiry. In the Department's case, it is difficult to imagine what risk to the public wellbeing would arise by the disclosure of information about where decaying radioactive tracers were injected into gas wells a half-decade ago. Also puzzling is that this office produced, in response to the Request, an internal e-mail, dated November 16, 2010, wherein Department employees noted concerns of radiation exposure to Department inspectors associated with the use of radioactive tracers. *See*, Attachment 3.

Simply put, the Department withheld records based on "Public Safety and Security" exemptions and redacted information in other records based on these same exemptions that are inappropriate under the RTKL.

Personal Identification Information

The Department claims an exemption pursuant to the "Personal Identification Information" exception in Section 708(b)(6) of the RTKL and identifies that it has withheld records related to an Elk Waste Services employee driver's license number and Department some employees' internal telephone numbers and names while revealing others. The Department's utilization of this exemption is far too broad and improper.

The Department's claim for the need to redact the names of its employee(s) and correspondence recipient(s), and employees' internal telephone numbers is absurd. For example, the Northwest regional office did not redact the identity or telephone number of John R. Crow, its Solid Waste Supervisor in a letter to Mr. Chester Cheatle of Elk Waste Services, Inc. enclosing a Consent Assessment of Civil Penalty, in the records it produced in response to the Request. Conceivably, if the Department considered this to be a record that could not be provided to the public, it should have redacted it, which it did not.

In light of the foregoing, Requester challenges the Department's withholding of the nineteen (19) pages responsive to this Request.

Program Managers' Conference Call

Wednesday, June 16, 2010

9:30 – 11:30 am

MINUTES

Participants

- CO: Steve Socash, Laura Henry, Joe Sieber, Renee Bartholomew (BWM)
Dave Allard, Jim Barnhart (BRP)
- SE: Joe Feola, Jim Wentzel
- NE: Bill Tomayko, Tracey McGurk
- SC: John Oren, John Spang
- NC: Pat Brennan
- SW: Mike Forbeck, Diane McDaniel
- NW: Todd Carlson, Joel Fair

Topics Discussed

- o **Next meeting:** Thursday, September 9, 2010, RCSOB 14th floor Large Conference Room; face-to-face meeting directly after the SWANA/PWIA Conference
- o **Iridium-192 at Rustick LF & NORM/TENORM Issues** (see associated e-mail)
Dave Allard discussed this case and additional NORM/TENORM issues associated with disposal of frac fluid at MWLF's. Rustick had a hit of Iridium-192 in waste generated at an Oil & Gas well in which the drilling was traced by ProTechnics, a company out of Texas that utilizes Iridium-192 beads for tracing the efficiency of a well fracture. ProTechnics is currently the only company utilizing this technology in PA, and the Department has come across some compliance issues concerning disposal of the resulting waste. ProTechnics' license allows for in-situ decay on site with subsequent disposal at a LF; however, it has been discovered that drill cuttings may have been improperly managed. RP is currently seeking to take enforcement action against ProTechnics, and recent WM inspections will probably result in enforcement action by that program as well.

In general, Radium has been an issue; it has also been found in the solid component of the frac waste. It is OK for a MWLF to dispose of this material under a BRP exemption, and Regional WM staff has the ability to approve its disposal. BRP requirements include maintenance of a spreadsheet of loads containing TENORM for tracking purposes. It is important that WM and RP continue to coordinate with each other on these issues (enforcement actions, handling for disposal, etc.) and that WM keeps RP in the loop when it sees new sources of TENORM coming in for disposal.





pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHWEST REGIONAL OFFICE

APC
Anita Jones
Yodd TC

August 4, 2010

Mr. Chester Cheatele
Elk Waste Services, Inc.
134 Sara Road
Saint Marys, PA 15857

Re: Consent Assessment of Civil Penalty

Dear Mr. Cheatele:

Please find enclosed a copy of the executed Consent Assessment of Civil Penalty (CACP) for your records.

Thank you for your cooperation in this matter.

If you have any questions concerning the CACP or any waste related issue please feel free to contact me at 814.332.6829.

Sincerely,

John R. Crow
Solid Waste Supervisor
Waste Management

Enclosure

cc: NWRO
Enf. File

JRC:jb

EXHIBIT
Attachment
2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Elk Waste Services, Inc. : Solid Waste management Act
134 Sara Road :
Saint Marys, PA 15857 :

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty is entered into this 3rd day of August 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Elk Waste Services, Inc. ("Elk Waste Services").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§6018.101-6018.1003 ("Solid Waste Management Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §§510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").

B. Elk Waste Services is a "person," as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103, and is engaged in the collection and/or transportation of Solid Waste within the Commonwealth of Pennsylvania.

C. On May 21, 2010, Elk Waste Services transported contaminated liner material and other cleanup waste from a gas well drilling site in Shippen Township, Cameron County to McKean County Landfill in Sergeant Township, McKean County, Pennsylvania.

D. The contaminated liner material and other cleanup waste ("Waste") noted in Paragraph C, above, is "solid waste" and "residual waste" as those terms are defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103, and 25 Pa. Code §287.1.

E. On May 21, 2010, Elk Waste Services transported the Waste to McKean County Landfill for disposal in a vehicle that did not have a contingency plan to minimize and abate a discharge of residual waste in violation of 25 Pa. Code §299.216(d), and the vehicle did not have a daily operational record in violation of 25 Pa. Code §299.219(a).

F. On May 21, 2010, Elk Waste Services transported the Waste to McKean County Landfill without McKean County Landfill having a permit or written approval from the Department that expressly allowed the disposal of the Waste in violation of Section 303(a) of the Solid Waste Management Act, 35 P.S. §6018.303(a), and 25 Pa. Code §299.215(b).

G. On June 14, 2010, the Department issued Elk Waste Services a Notice of Violation for the violations identified in Paragraphs E, and F, above.

H. The violations described in Paragraphs E, and F, above, constitute unlawful conduct under Section 610(4) of the Solid Waste Management Act, 35 P.S. §6018.610(4); and subjects Elk Waste Services to a claim of civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605.

I. As of the date of this Consent Assessment of Civil Penalty, Elk Waste Services has corrected all of the violations identified in Paragraphs E, and F, above.

After full and complete negotiation of all matters set forth in this Consent Assessment of Civil Penalty and upon mutual exchange of the covenants herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Elk Waste Services as follows:

1. *Assessment.* In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605, the Department hereby assesses a civil penalty of \$500, which Elk Waste Services hereby agrees to pay.

2. *Civil Penalty Settlement.* Upon signing this Consent Assessment of Civil Penalty, Elk Waste Services shall pay the civil penalty assessed in Paragraph 1. The payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs E, and F, above, for the date set forth in Paragraphs E, and F, above. The payment shall be by corporate check or the like, made payable to Commonwealth of Pennsylvania and sent to John Crow, Solid Waste Supervisor, 230 Chestnut Street, Meadville, PA 16335.

3. *Findings.*

(a) Elk Waste Services agrees that the Findings in Paragraphs A through I are true and correct and, in any matter or proceeding involving Elk Waste Services and the Department, Elk Waste Services shall not challenge the accuracy or validity of these Findings.

(b) The Parties do not authorize any other persons to use the Findings in this Consent Assessment of Civil Penalty in any matter or proceeding.

4. *Reservation of Rights.* The Department reserves all other rights with respect to any matter addressed by this Consent Assessment of Civil Penalty, including the right to require abatement of any conditions resulting from the events described in the Findings. Elk Waste Services reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this Consent Assessment of Civil Penalty.

IN WITNESS WHEREOF, the Parties have caused this Consent Assessment of Civil Penalty to be executed by their duly authorized representatives. The undersigned representative of Elk Waste Services certifies, under penalty of law, as provided by 18 Pa.C.S.A. §4904, that they are authorized to execute this Consent Assessment of Civil Penalty on behalf of Elk Waste Services, that Elk Waste Services consents to the entry of this Consent Assessment of Civil Penalty as an ASSESSMENT of the Department; that Elk Waste Services hereby knowingly waives any right to a hearing under the statutes referenced in this Consent Assessment of Civil Penalty; and that Elk Waste Services

· knowingly waives their right to appeal this Consent Assessment of Civil Penalty, and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa.C.S.A. §103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Elk Waste Services's attorney certifies only that the assessment has been signed after consulting with counsel.

FOR ELK WASTE SERVICES, INC.:

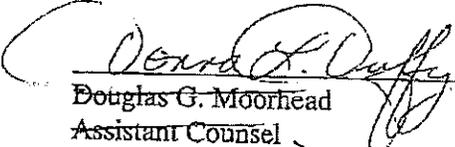

Name Chester L. Cheattle
Title PRESIDENT

Name
Attorney For Elk Waste Services, Inc.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Todd Carlson
Regional Manager
Waste Management Program
Northwest Region



Douglas G. Moorhead
Assistant Counsel

DONNA L. DUFFY
Regional Counsel

Carlson, Todd

From: Carlson, Todd
Sent: Tuesday, November 16, 2010 9:57 AM
To: Burch, Kelly; Gustafson, Staci; Lobins, Craig
Cc: Wozniak, Gary
Subject: FW: Protechnics COA
Attachments: ① ProTechnics COA.pdf

I'm sending this to let you know that our Rad Protection folks signed a CO&A with ProTechnics over the incident at Rustick landfill this spring that set off their rad meter. The CO&A was for \$29,000. The event was initiated with a flowback event which brought the radioactive tracer beads to the surface and the eventual transfer of the radioactive material to McKean County Landfill. ProTechnics is the company licensed to use the radioactive material at well sites. This sounds like a potential source of exposure for our well inspectors at the well sites. Maybe Gary and Craig will want to include something related to this in the 8 hour refresher...at least for O&G staff(?).

-----Original Message-----

From: Stainbrook, Anita
Sent: Tuesday, November 16, 2010 9:10 AM
To: Crow, John; Sheriff, Richard
Cc: Carlson, Todd; Fair, Joel
Subject: FW: Protechnics COA

Fyi. Rad followed through on penalty with ProTechnics.

-----Original Message-----

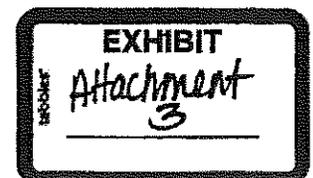
From: Forney, Lisa
Sent: Monday, November 15, 2010 10:12 AM
To: Brennan, Patrick; Stainbrook, Anita
Cc: Yusko, James (DEP); Derstine, Terry; Brown, Donald P.; Craig, Bridget; Leskosky, John; Cooley, Marc B; Means, Jennifer; Forney, Lisa; Deman, Joseph
Subject: Protechnics COA

I would like to share of copy of our executed COA with ProTechnics. If you have any questions or wish to discuss, please let me know.

As a side note to Pat....

The efforts to date are getting attention in the industry. I just received a phone call from ProTechnics. They are very concerned that the well owner/operator (JW Operating) was held accountable. I told them that NW's Waste Program also collected a penalty from the transporter. I reminded them that when this occurred previously we issued an NOV. However, it happened again..... further action was warranted. I guess that they will get used to it and hopefully do a better job in the future. Just out of curiosity, would you be willing to share a copy of your CACP?

Lisa A. Forney | Environmental Protection Compliance Specialist
Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue | Harrisburg, PA 17110.8200
Phone: 717.705.4898 | Fax: 717.705.4710
www.denweb.state.pa.us





UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
811 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

November 4, 2003

Core Laboratories, Inc.
dba ProTechnics Division of Core Laboratories
ATTN: Will C. Williams
Radiation Safety Officer
9830 Rosprim
Houston, TX 77040

SUBJECT: LICENSE AMENDMENT

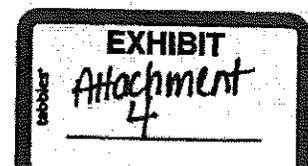
Please find enclosed Amendment No. 30 to License No. 42-26928-01. You should review this license carefully and be sure that you understand all conditions. If you have any questions, you may contact me at (817) 860-8221 or via e-mail lcc1@nrc.gov.

This amendment authorizes an additional disposal alternative pursuant to 10 CFR 20.2002 to inject well returns (sandouts) containing radioactive tracer material with physical half-lives of the material is 120 days or less (sodium-24, scandium-46, chromium-51, rubidium-86, antimony-124, iodide-131, xenon-133, iridium-192, or gold-198) into Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by State agencies.

Attached for your perusal is a copy of the Federal Register (Volume 68, Number 208) dated October 28, 2003, publishing the results of NRC's environmental assessment (EA). The Federal Register indicates that NRC staff completed its assessment of your proposed disposal in Class II wells of sandouts containing radioactive tracer materials. The staff made a finding of no significant impact (FONSI) to the environment.

NRC expects licensees to conduct their programs with meticulous attention to detail and a high standard of compliance. Because of the serious consequences to employees and the public that can result from failure to comply with NRC requirements, you must conduct your radiation safety program according to the conditions of your NRC license, representations made in your license application, and NRC regulations. In particular, note that you must:

1. Operate by NRC regulations 10 CFR Part 19, "Notices, Instructions and Reports to Workers: Inspection and Investigations," 10 CFR Part 20, "Standards for Protection Against Radiation," and other applicable regulations.
2. Notify NRC in writing of any change in mailing address.



3. By 10 CFR 30.36(b) and/or license condition, notify NRC, promptly, in writing, and request termination of the license:
 - a. When you decide to terminate all activities involving materials authorized under the license; or
 - b. If you decide not to complete the facility, acquire equipment, or possess and use authorized material.
4. Request and obtain a license amendment before you:
 - a. Change Radiation Safety Officers;
 - b. Order byproduct material more than the amount or form authorized on the license;
 - c. Add or change the areas or address(es) of use identified in the license application or on the license; or
 - d. Change the name or ownership of your organization.
5. Submit a complete renewal application or termination request at least 30 days before the expiration date on your license. You will receive a reminder notice approximately 90 days before the expiration date. Possession of radioactive material after your license expires is a violation of NRC regulations.

In addition, please note that NRC Form 313 requires the applicant, by signature, to verify that the applicant understands that all statements contained in the application are true and correct to the best of the applicant's knowledge. The signatory for the application should be the licensee or certifying official rather than a consultant.

NRC will periodically inspect your radiation safety program. Failure to conduct your program according to NRC regulations, license conditions, and representations made in your license application and supplemental correspondence with NRC may result in enforcement action against you. This could include issuance of a notice of violation; imposition of a civil penalty; or an order suspending, modifying, or revoking your license as specified in the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG 1600.

Core Laboratories, Inc.

-3-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, and your response (if any) will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Thank you for your cooperation.

Sincerely,

/RA/

Louis C. Carson II, Health Physicist
Nuclear Materials Licensing Branch

Docket: 030-30429
License: 42-26928-01
Control: 468137

Enclosures: As stated

MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

Licensee	In accordance with letter dated August 23, 2000
1. Core Laboratories, Inc. dba ProTechnics Division of Core Laboratories	3. License number 42-26928-01 is amended in its entirety to read as follows:
2. 9830 Rosprim Houston, Texas 77040	4. Expiration date January 31, 2006
	5. Docket No. 030-30429 Reference No.

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
A. Iodine-131	A. Any	A. 500 millicuries
B. Iridium-192	B. Any	B. 5000 millicuries
C. Scandium-46	C. Any	C. 3000 millicuries
D. Gold-198	D. Any	D. 5000 millicuries
E. Zirconium-95	E. Any	E. 500 millicuries
F. Xenon-133	F. Any	F. 500 millicuries
G. Chromium-51	G. Any	G. 1500 millicuries
H. Antimony-124	H. Any	H. 2000 millicuries
I. Rubidium-86	I. Any	I. 3000 millicuries
J. Bromine-82	J. Any	J. 3000 millicuries
K. Hydrogen-3	K. Any	K. 999 millicuries
L. Sodium-24	L. Any	L. 2000 millicuries
M. Americium-241	M. Sealed Source (Gammatron Model AN-HP, Gulf Nuclear Model VL-1)	M. No single source to exceed 250 microcuries, total possession 100 millicuries
N. Americium-241	N. Sealed Source (Isotope Products Model HEG-241 Series, Capsule A-3015)	N. No single source to exceed 50 millicuries
O. Barium-133	O. Sealed Source (Isotope Products Model HEG-133 Series, Capsule A-3015)	O. No single source to exceed 2 millicuries, total possession 200 millicuries

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**

License Number
42-26928-01

Docket or Reference Number
030-30429

Amendment No. 30

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
P. Cesium-137	P. Sealed Source (Isotope Products Model HEG-137 Series, Capsule A-3015)	P. No single source to exceed 200 millicuries, total possession 20 curies
Q. Cesium-137	Q. Sealed Source (Isotope Products Model HEG-137 Series, Capsule A-3015)	Q. No single source to exceed 600 millicuries
R. Cesium-137	R. Any	R. 50 microcuries
S. Cobalt-60	S. Any	S. 50 microcuries
T. Iridium-192	T. Any	T. 50 microcuries
U. Scandium-46	U. Any	U. 50 microcuries
V. Antimony-124	V. Any	V. 50 microcuries
9. Authorized use:		
A. through K.	For use in tracer studies in oil and gas wells.	
A., J., and L.	For use in above ground tracer studies.	
M. and N.	For use as a calibration/stabilization source in Halliburton Model TSCAN logging tool for logging tracer material in oil and gas wells.	
O. and P.	For use as a calibration/stabilization source in Cedar Bluff Group's Fluid Identification logging tool for logging tracer material in oil and gas wells.	
Q.	For use in oil and gas well logging.	
R. through V.	For use in pipe collar markers in oil and gas wells.	

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

CONDITIONS

10. Radioactive material shall be used only at the following:

- A. 1930 Elk Street, Rock Springs, Wyoming; Natrona County International Airport, 3857 Dame, Casper, Wyoming; Alaska Department of Natural Resources Deadhorse Tract 57, Spine Road, Prudhoe Bay, Alaska.
- B. License materials may be stored at Shell Offshore, Inc. Gas Well: OSG-C 11553, Well No. 2, Field: Garden Banks Block 602, Offshore Louisiana, in accordance with letter December 16, 1999, pending final abandonment.
- C. Temporary job sites anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.

If the jurisdiction status of a Federal facility within an Agreement State is unknown, the licensee should contact the federal agency controlling the job site in question to determine whether the proposed job site is an area of exclusive Federal jurisdiction. Authorization for use of radioactive materials at job sites in Agreement States not under exclusive Federal jurisdiction shall be obtained from the appropriate state regulatory agency.

11. Licensed material identified in Item 6.L. may be temporarily stored in accordance with letter dated August 10, 1998.
12. A. Licensed material shall be used by, or under the supervision and in the physical presence of, individuals who have completed the Support Consultants and Associates, Inc., F. L. Clifford Associates, Sharp Radiation Services, W. H. Henkin Industries, Inc., Amersham/Gulf Nuclear, Inc., or ProTechnics Environmental Services, Inc., training courses and have been designated by the Radiation Safety Officer.

B. The Radiation Safety Officer for this license is Will C. Williams.
13. The licensee shall not vacate or release to unrestricted use a field office or storage location whose address is identified in Condition 10, without prior NRC approval.
14. The licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."
15. Pursuant to 10 CFR 39.91, the licensee is exempted from the requirements of 10 CFR 39.63(b) for use of remote handling tools. This exemption will remain in effect until formally withdrawn by the NRC.

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

16. Notwithstanding the requirements of 10 CFR 39.47 and pursuant to 10 CFR 39.91, and in accordance with the statements, representations and procedures contained in letter dated July 14, 1997, and February 4, 1998, the licensee may use radioactive markers with activities of 50 microcuries or less of iridium-192, scandium-46, antimony-124, cobalt-60, and cesium-137 as pipe collar markers in oil and gas wells.
17. The licensee is authorized to hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal in ordinary trash provided:
- A. Radioactive waste to be disposed of in this manner shall be held for decay a minimum of 10 half-lives.
 - B. Before disposal as ordinary trash, byproduct material shall be surveyed at the container surface with the appropriate meter set on its most sensitive scale and with no interposed shielding to determine that its radioactivity cannot be distinguished from background. All radiation labels shall be removed or obliterated.
 - C. A record of each disposal permitted under this License Condition shall be retained for 3 years. The record must include the date of disposal, the date on which the byproduct material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.
18. Notwithstanding the requirements of 10 CFR 20.2007, pursuant to 10 CFR 20.2002, and in accordance with the statements, representations, and procedures contained in correspondence dated August 23, 2000, January 23, 2002, and October 30, 2003, the licensee may release well-logging sandouts and well returns, containing residual radioactive materials, into Class II Disposals Wells provided:
- A. The total radioactive concentration of all isotopes is 1,000 picocuries/gram or less, and the physical half-life of the radioactive material is 120 days or less.
 - B. The residual radioactive tracer material (sodium-24, scandium-46, chromium-51, rubidium-86, antimony-124, iodide-131, xenon-133, iridium-192, or gold-198) being disposed of will be in the form of the patented "Zero-Wash" product in sandouts or well returns.
 - C. The well has been Permitted by the State, Territory, or Federal jurisdiction to accept non-hazardous oil and gas waste regardless of whether the job site is in an area where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.
 - D. The licensee maintains an agreement with the owner or operator to control access to the Class II Disposal Well until the radioactivity has decayed to unrestricted release levels.

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

19. Except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The U.S. Nuclear Regulatory Commission's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.

- A. Application dated November 15, 1991
- B. Facsimile dated November 25, 1991
- C. Letter dated February 14, 1992
- D. Letter dated March 1, 1993
- E. Letter dated April 12, 1993
- F. Letter dated May 4, 1993
- G. Letter dated October 26, 1993
- H. Letter dated April 20, 1994
- I. Letter dated May 6, 1994
- J. Letter dated May 19, 1994
- K. Letter dated May 26, 1994
- L. Letter dated October 20, 1994
- M. Letter dated January 4, 1995
- N. Letter dated January 11, 1995
- O. Letter dated June 13, 1995, authorization of new facility only.
- P. Letter dated June 13, 1995, authorization to use the Model TSCAN
- Q. Letter dated September 12, 1995
- R. Letter dated September 27, 1995
- S. Letter dated October 26, 1995
- T. Letter dated January 17, 1996
- U. Letter dated February 13, 1996
- V. Letter dated February 24, 1997
- W. Letter dated July 14, 1997
- X. Letter dated November 14, 1997
- Y. Letter dated January 20, 1998
- Z. Letter dated January 27, 1998
- AA. Letter dated February 4, 1998
- BB. Letter received May 20, 1998
- CC. Letter dated July 15, 1998
- DD. Letter dated August 10, 1998
- EE. Letter dated August 31, 1999
- FF. Letter dated December 16, 1999
- GG. E-mail dated February 11, 2000
- HH. Letter dated March 3, 2000
- II. Letter dated June 5, 2000
- JJ. Letter dated June 15, 2000
- KK. Facsimile dated July 6, 2000
- LL. E-mail dated February 14, 2000

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19. (Continued)

MM. Letter dated May 22, 2000

NN. Letter dated August 22, 2001

OO. Letter dated November 7, 2001

PP. Letter dated August 23, 2000

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

Date November 4, 2003

By _____

Jack E. Whitten, Chief
Division of Nuclear Materials Safety
Region IV
Arlington, Texas 76011

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U.S. NUCLEAR REGULATORY COMMISSION

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MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

<p align="center">Licensee</p> <p>1. Core Laboratories, Inc. dba ProTechnics Division of Core Laboratories</p> <p>2. 6316 Windfern Road Houston, Texas 77040</p>	<p>In accordance with letter dated July 30, 2012</p> <p>3. License number 42-26928-01 is amended in its entirety to read as follows:</p> <p>4. Expiration date February 28, 2016</p> <p>5. Docket No. 030-30429</p> <p>Reference to:</p>
--	--

<p>6. Byproduct, source, and/or special nuclear material</p>	<p>Chemical and/or physical form</p>	<p>8. Maximum amount that licensee may possess at any one time under this license</p>
A. Hydrogen-3	A. Any	A. Not to exceed 999 millicuries total and 100 millicuries per injection
B. Scandium-46	B. Any	B. Not to exceed 8,000 millicuries total and 40 millicuries per injection
C. Bromine-82	C. Any	C. Not to exceed 3,000 millicuries total and 400 millicuries per injection
D. Zirconium-95	D. Any	D. Not to exceed 750 millicuries total and 40 millicuries per injection
E. Antimony-124	E. Any	E. Not to exceed 8,000 millicuries total and 40 millicuries per injection
F. Iodine-131	F. Any	F. Not to exceed 200 millicuries total and 50 millicuries per injection
G. Iridium-192	G. Any	G. Not to exceed 12,000 millicuries total and 40 millicuries per injection
H. Gold-198	H. Any	H. Not to exceed 1,000 millicuries total and 200 millicuries per injection
I. Bromine-82	I. Any	I. Not to exceed 3,000 millicuries total and 400 millicuries per injection
J. Barium-133	J. Sealed Source (Isotope Products Labs. Model HEG-133 Series, Capsule A-3015)	J. No single source to exceed 2 millicuries; total possession 40 millicuries



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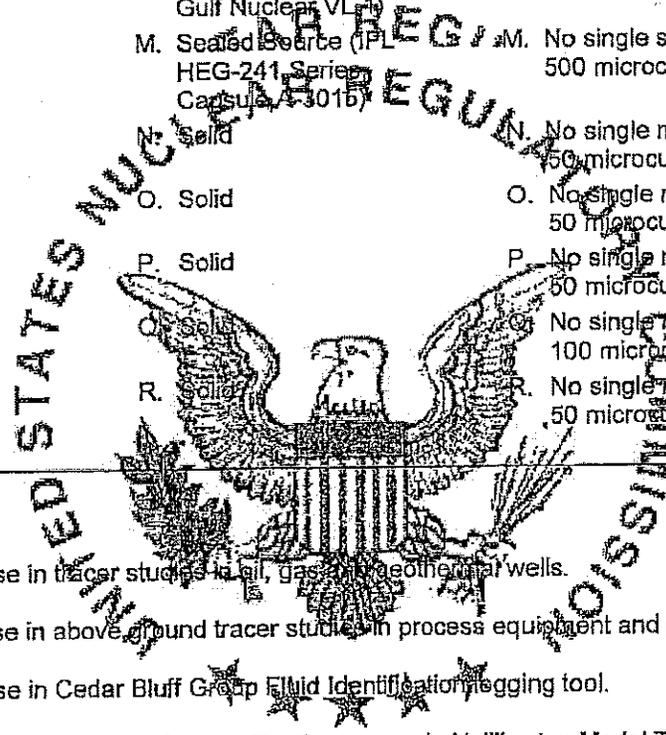
**MATERIALS LICENSE
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6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
K. Cesium-137	K. Sealed Source (Isotope Products Model HEG-137 Series, Capsule A-3015)	K. No single source to exceed 500 millicuries; total possession 10 curies
L. Americium-241	L. Sealed Source (Gammatron AN-H, Gulf Nuclear VL-4)	L. No single source to exceed 500 microcuries; 10 millicuries total
M. Americium-241	M. Sealed Source (IPL HEG-241 Series, Capsule A-3015)	M. No single source to exceed 500 microcuries; 10 millicuries total
N. Scandium-46	N. Solid	N. No single marker to exceed 50 microcuries
O. Cobalt-60	O. Solid	O. No single marker to exceed 50 microcuries
P. Antimony-124	P. Solid	P. No single marker to exceed 50 microcuries
Q. Cesium-137	Q. Solid	Q. No single marker to exceed 100 microcuries
R. Iridium-192	R. Solid	R. No single marker to exceed 50 microcuries



9. Authorized use:

- A. through H. For use in tracer studies in oil, gas, or geothermal wells.
- I. For use in above ground tracer studies in process equipment and pipelines.
- J. and K. For use in Cedar Bluff Group Fluid Identification logging tool.
- L. and M. For use as a calibration/stabilization source in Halliburton Model TSCAN logging tool.
- N. through R. For use in pipe collar markers in oil and gas wells.

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CONDITIONS

10. Licensed material shall be stored or used only at the following:

- A. i. Alaska Department of Natural Resources, Deadhorse Tract 57, Spine Road, Prudhoe Bay, Alaska
- ii. 1701 Old St. Mary's Pike, Parkersburg, West Virginia
- iii. 570 Jonah Drive, Rock Springs, Wyoming, and
- iv. 1030 Silurian Lane, Sidney, Montana

B. Licensed material may be stored at Shell Offshore Inc. Gas Well: OSG-C 11553, Well No. 2, Field: Garden Banks Block 602, Offshore Louisiana, in accordance with letter December 16, 1999, pending final abandonment

C. Licensed material identified in letter dated March 02, 2006, may be stored at Exxon Mobil Production Company's Gas Well: Tip Top T65-30G2, Section 30 Township 29N Range 113W, Sublette County Wyoming, API #49-0352389, in accordance with letter dated March 02, 2006, pending final abandonment.

D. Licensed material identified in letter dated May 08, 2006, may be stored at Anadarko Petroleum Company's Well: Green Canyon 348#1 St00BP2, Offshore Gulf of Mexico, OCS-G21801, API#60-811-40377-02, in accordance with letter dated May 08, 2006, pending final abandonment.

E. Temporary job sites anywhere in the United States where the U.S. Regulatory Commission maintains jurisdiction for regulating the use of licensed material including areas of exclusive Federal jurisdiction within Agreement States.

If the jurisdiction status of a Federal facility within an Agreement State is unknown, the licensee should contact the federal agency controlling the job site in question to determine whether the proposed job site is an area of exclusive Federal jurisdiction. Authorization for use of radioactive materials at job sites in Agreement States no under exclusive Federal jurisdiction shall be obtained from the appropriate state regulatory agency.

11. A. Licensed materials shall be used by or under the supervision and in the physical presence of, or individuals who have been trained as specified in letters dated December 16, 2005 and February 21, 2006.

B. The Radiation Safety Officer for this license is Will C. Williams.

12. The licensee shall not vacate or release to unrestricted use a field office or storage location whose address is identified in Condition 10, without prior U.S. Nuclear Regulatory Commission approval.

13. The licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transport of Radioactive Material."

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14. Pursuant to 10 CFR 39.91, the licensee is exempted from the requirements of 10 CFR 39.63(b) for use of remote handling tools. This exemption will remain in effect until formally withdrawn by the U.S. Nuclear Regulatory Commission.

15. Notwithstanding the periodic leak test required by 10 CFR 39.35, the requirement does not apply to sources, except sources containing plutonium, that are stored and not being used. The sources exempted from this periodic test shall be tested for leakage before use or transfer to another person. No sealed source shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.

16. Notwithstanding the requirements of 10 CFR 39.47 and pursuant to 10 CFR 39.91, and in accordance with the statements, representations and procedures contained in letters dated July 14, 1997 (ML003724357), November 14, 1997 (ML003724675), January 20, 1998 (ML003724684), February 4, 1998 (ML003724694), and February 27, 2004 (ML040580735), the licensee may use radioactive markers with activities of 50 microcuries or less of iridium-192, scandium-46, antimony-124, and cobalt-60, and 100 microcuries or less of cesium-137 as pipe collar markers in oil and gas wells.

17. The licensee is authorized to hold byproduct material with a physical half-life of less than or equal to 120 days for decay-in-storage before disposal without regard to its activity if the licensee:
 - A. Monitors byproduct material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and
 - B. Removes or obliterates all activity labels and radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee; and
 - C. Maintains records of the disposal of licensed materials for up to 3 years. The record must include the date of disposal, the survey instrument used, the background and radiation level measured at the surface of each waste container, and the name of the individual who performed the disposal.

18. Notwithstanding the requirements of 10 CFR 20.2007, pursuant to 10 CFR 20.2002, and in accordance with the statements, representations, and procedures contained in correspondence dated May 4, 1993 (ML12243A227), April 20, 1994 (ML12243A209), January 17, 1996 (ML12243A188), February 13, 1996 (ML12243A188), and December 16, 2005 (ML060260462), the licensee may release well-logging sandouts and well returns, containing residual radioactive materials, into on-site shallow earthen pit provided that:
 - A. The total radioactive concentration of all isotopes is 1,000 picocuries/gram or less, and the physical half-life of the radioactive material is 120 days or less.
 - B. The residual radioactive tracer material (scandium-46, bromine-82, zirconium-95, antimony-124, iodine-131, iridium-192, or gold-198) being disposed of will be in the form of the patented "Zero-Wash" product in sandouts or well returns.

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- C. The licensee is required to use well logging beads known as "Zero-Wash", which are insoluble where the radioactivity will not migrate or leach into groundwater, as described in letter dated July 11, 1991 (ML033040193).
 - D. The on-site shallow earthen pit disposal method has been permitted by the State, Territory, or Federal jurisdiction regardless of whether the job site is in an area where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.
 - E. The licensee is required to maintain access control over the on-site shallow earthen pit until the radioactivity has decayed to unrestricted release levels.
 - F. The licensee maintains an agreement with the owner or operator to control access to the on-site shallow earthen pit until the radioactivity has decayed to unrestricted release levels.
 - G. The licensee is required to maintain records of disposal in accordance with 10 CFR 20.2108.
19. Notwithstanding the requirements of 10 CFR 20.2007, pursuant to 10 CFR 20.2002, and in accordance with the statements, representations, and procedures contained in correspondence dated August 23, 2000 (ML003758270), January 23, 2002 (ML033070068), and October 30, 2003 (ML033070340), the licensee may release well logging sandouts and well returns containing residual radioactive materials, into Class II Disposal Wells provided that:
- A. The total radioactive concentration of all isotopes is 1,000 picocuries/gram or less, and the physical half-life of the radioactive material is 20 years or less.
 - B. The residual radioactive trace material (strontium-90, bromine-82, zirconium-95, antimony-124, iodine-131, iridium-192, or gallium-68) being disposed of will be in the form of the patented "Zero-Wash" product in sandouts or well returns.
 - C. The licensee is required to use well logging beads known as "Zero-Wash", which are insoluble where the radioactivity will not migrate or leach into groundwater, as described in letter dated July 11, 1991 (ML033040193).
 - D. The well has been permitted by the State, Territory, or Federal jurisdiction to accept non-hazardous oil and gas waste regardless of whether the job site is in an area where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.
 - E. The licensee is required to maintain access control over the Class II Disposal Well until the radioactivity has decayed to unrestricted release levels.
 - F. The licensee maintains an agreement with the owner or operator to control access to the Class II Disposal Well until the radioactivity has decayed to unrestricted release levels.

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**MATERIALS LICENSE
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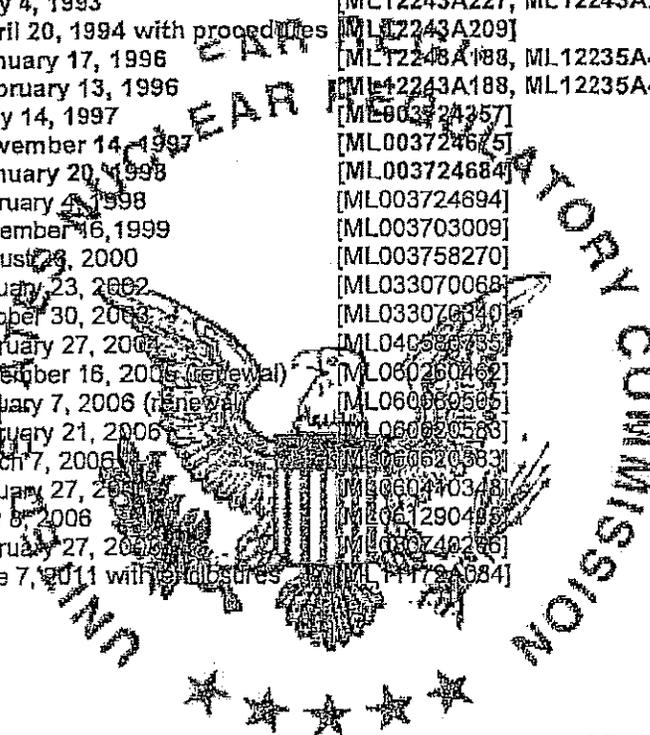
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G. The licensee is required to maintain records of disposal in accordance with 10 CFR 20.2108.

20. Except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The U.S. Nuclear Regulatory Commission's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.

- | | |
|--|----------------------------|
| A. Letter dated May 4, 1993 | [ML12243A227, ML12243A209] |
| B. Letter dated April 20, 1994 with procedures | [ML12243A209] |
| C. Letter dated January 17, 1996 | [ML12243A188, ML12235A437] |
| D. Letter dated February 13, 1996 | [ML12243A188, ML12235A437] |
| E. Letter dated July 14, 1997 | [ML003724675] |
| F. Letter dated November 14, 1997 | [ML003724675] |
| G. Letter dated January 20, 1998 | [ML003724684] |
| H. Letter dated February 4, 1998 | [ML003724694] |
| I. Letter dated December 16, 1999 | [ML003703009] |
| J. Letter dated August 23, 2000 | [ML003758270] |
| K. Letter dated January 23, 2002 | [ML033070068] |
| L. Letter dated October 30, 2003 | [ML033070040] |
| M. Letter dated February 27, 2004 | [ML040690755] |
| N. Letter dated December 16, 2005 (renewal) | [ML060260462] |
| O. Letter dated January 7, 2006 (renewal) | [ML060080505] |
| P. Letter dated February 21, 2006 | [ML060090568] |
| Q. Letter dated March 7, 2006 | [ML060062063] |
| R. Letter dated January 27, 2006 | [ML060044038] |
| S. Letter dated May 8, 2006 | [ML061290465] |
| T. Letter dated February 27, 2006 | [ML060740266] |
| U. Letter dated June 7, 2011 with enclosures | [ML111794984] |



FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Date August 30, 2012

By *Roberto J. Torres*
 Roberto J. Torres, Senior Health Physicist
 Nuclear Materials Safety Branch B
 Region IV
 Arlington, Texas 76011-4511



UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 REGION IV
 611 RYAN PLAZA DRIVE, SUITE 400
 ARLINGTON, TEXAS 76011-4005

File Copy!

REGIONAL TECHNICAL ASSISTANCE REQUEST FORM

Date: January 24, 2003

Mail and E-Mail to: Donald A. Cool, Ph.D. (DAC), Director
 Division of Industrial and Medical Nuclear Safety, NMSS
 For E-Mail, cc: IMNS Secretary

From: Ken E. Brockman, Director
 Division of Nuclear Materials Safety (DNMS), RIV

Licensee(s): Core Laboratories, Inc. (DBA: ProTechnics Division of Core Laboratories)

License Number(s) 42-26928-01 Docket Number(s): 30-30429

Control Number: 468137

Letter(s) dated:

- August 23, 2000: Core Laboratories' license amendment request (LAR) for an alternate disposal method to allow licensed material in the form of waste returns with radioactive tracer material to be injected in Class II disposal wells.
- November 22, 2002: RIV's Safety & Technical Assessment - Core Laboratories' Request to Inject Well-logging Waste in Class II Disposal Wells

Enforcement Action being held in abeyance: () Yes (X) No

Suggested change in licensing procedure:

Regarding licensing actions, Region IV DNMS Nuclear Materials Licensing Branch (NMLB) requests technical assistance clarifying the following: (1) 10 CFR 51.22(c)(14)(xi) categorical exclusion for using sealed sources and radioactive tracers in well-logging, and (2) Current NRC guidance allowing the Regions to make decisions with appropriate documentation per the May 7, 2001, letter from the Division of Waste Management (DWM) (J.Greeves/M. Wong), "Guidance on the Preparation of Environmental Assessments for Licensing Actions by Regional Offices."

Problem/Issue:

On August 23, 2000, Core Laboratories submitted an LAR to RIV for an alternate disposal method that allows licensed material in the form of waste returns with radioactive tracer material to be injected in Class II disposal wells. Based on reviews of NRC guidance, discussions with NMSS (INMS and DWM), and considering the current Core Laboratories license, it was unclear that Region IV's NMLB could approve this LAR or any similar LARs in the future without NMSS reviewing a TAR on this matter.

Action Requested:

Approve the TAR by concurring with Region IV's November 22, 2002, **Safety & Technical Assessment** (enclosed therein) on Core Laboratories' LAR to inject well-logging radioactive waste into Class II Disposal Wells.

Recommended Action and Alternatives: (X) Approve or () Reject

TARs addressing similar issues (subject and date):

December 18, 1995: Division of Waste Management's TAR response approving Core Laboratories (ProTechnnics) 1993 request for generic authorization for onsite burial of radioactive materials from well-logging sandouts, flowbacks, or any other form in an earthen pit pursuant to 10 CFR 20.2002.

Background documents:

- November 22, 2002: RIV's Safety & Technical Assessment - Core Laboratories' Request to Inject Well-logging Waste in Class II Disposal Wells
- January 23, 2002: Supplemental information from Core Laboratories
- January 11, 2002: Letter from the Alaska Oil & Gas Conservation Commission (AOGCC) that allowed Marathon Oil Company to inject waste returns with radioactive tracer material in Class II disposal well, Kenai Unit 24-7.
- August 23, 2000: Core Laboratories Inc. license amendment request for alternate disposal of licensed material in Class II wells.
- May 7, 2001: Letter from the Division of Waste Management (J. Greeves/M. Wong), "Guidance on the Preparation of Environmental Assessments for Licensing Actions by Regional Offices"
- May 3, 2000: State of Texas License that allows Core Laboratories to discard well-logging "sandouts" or other materials from oil and gas wells into Class II disposal wells.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

November 22, 2002

MEMORANDUM TO: Jack E. Whitten, Acting Chief, Nuclear Materials Licensing Branch
(NMLB)

FROM: Louis C. Carson II, Sr. Health Physicist, NMLB *Louis C. Carson II*
License Reviewer

SUBJECT: SAFETY & TECHNICAL ASSESSMENT - CORE LABORATORIES'
REQUEST TO INJECT WELL-LOGGING WASTE IN CLASS II
DISPOSAL WELLS

Background and Proposed Action

This memorandum is in reference to a license amendment request (LAR) submitted by Core Laboratories, Incorporated (dba: ProTechnics) dated August 23, 2000. Core Laboratories' LAR requested the allowance of an "Additional Disposal Alternative." Core Laboratories stated that they are allowed to place any well returns (containing radioactive tracer material) from a frac-job in an onsite earthen pit. In addition to this earthen pit disposal method, the licensee seeks approval to allow the well returns to be injected in Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by State agencies.

Safety & Technical Assessment

I have reviewed this LAR and determined that RIV's NMLB could grant this request without a Technical Assistance Request (TAR) or Environmental Assessment (EA) to NMSS for review or approval. I have based this determination on reviews of NRC documents and discussions with NRC staff in RIV and HQ. RIV should grant this LAR based on the following: (1) 10 CFR 51.22(c)(14)(xi) is the categorical exclusion for using sealed sources and radioactive tracers in well-logging, (2) Current NRC guidance allows the Regions to make decisions with appropriate documentation, (3) An existing license condition allows Core Laboratories to dispose in earthen pits, and (4) This proposal to inject well returns down Class II disposal wells is safer than the current practice of placing radioactive waste into shallow earthen pits.

(1) **10 CFR 51.22(c)(14)(xi) is the categorical exclusion for using of sealed sources and radioactive tracers in well-logging.**

(a) **NRC's 10 CFR 51.14**

The NRC's 10 CFR 51.14, states that: "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect in accordance with procedures set out in §51.22, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

(b) **EPA's 40 CFR 1508.4**

The EPA's 40 CFR 1508.4, states that: "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(c) **Statement of Considerations, March 1984: Categorical Exclusions 10 CFR 51.22(c)(14)**

By definition a "Categorical Exclusion" means a category of actions which the NRC has determined do not individually or cumulatively have a significant effect on the human environment. Therefore, the NRC has determined that an EA or EIS is not required and would serve to divert scarce resources from more pressing business.

10 CFR 51.22(c)(14)(xi) categorically excluded the use of sealed sources and radioactive tracers in well-logging procedures. The NRC reviewed 89 well-logging incidents that occurred during the 20 years prior to 1984 in which well-logging sources had been abandoned down wells. An NRC risk assessment showed that only a small radiological risk existed to public health and safety from abandoned radioactive materials. The Commission carefully considered a comment that cited the loss of a 1-Curie americium-beryllium source down a well and subsequent decommissioning efforts. The Commission concluded that the environmental impact of licensing actions authorizing the use of sealed sources and radioactive tracer materials in well-logging procedures was negligible.

The NRC stated that routine safety measures also protect against significant environmental impacts from well-logging activities. Well-logging permits require that gas and oil wells be cased to below potable water aquifers to prevent cross contamination from brine, oil, and gas associated with wells. This requirement also serves to preclude contamination of portable water aquifers when radioactive materials

are used in these cased wells. In the event that radioactive material becomes irretrievable during a well-logging operation, safety requirements are imposed to minimize the escape of radioactivity from the surrounding areas. Additional requirements include mounting a permanent identification plaque at the surface of the well to alert anyone planning to enter the well to the existence of radioactive material. Also, a notification has to be placed in pertinent land records maintained by State oil and gas regulatory agencies to alert against drilling. The radioactive material is in the form of a very low solubility compound. The radioactive materials used as tracers in well-logging have short half-lives, and the quantities involved are small in the low millicurie range. **The NRC concluded that using these tracers does not present any environmental impact because of the small quantities which decay to innocuous radioactivity levels in short periods of time.**

(2) **Current NRC guidance allows the Regions to make decisions with appropriate documentation.**

(a) NUREG-1748, Appendix E Categorical Exclusion Checklist

The NRC's NUREG-1748, Draft Report, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs provides a Categorical Exclusion Checklist in Appendix E. This checklist has been completed by the license reviewer as an enclosure to this document in support of this evaluation process. The answers to all four generic categorical exclusion questions were "No." It was concluded that this LAR for approval of an "Additional Disposal Alternative" is categorically excluded and requires no further environmental review. Additionally, an environmental assessment for this action is not required, since well-logging activities are categorically excluded under 10 CFR 51.22(c)(14)(xi).

(b) Division of Waste Management Guidance

A May 7, 2001, letter from the Division of Waste Management (J. Greeves/M. Wong), "Guidance on the Preparation of Environmental Assessments for Licensing Actions by Regional Offices" states that EAs are required for all licensing actions that are not categorically excluded per 10 CFR 51.22, not covered in an existing Environmental Impact Statement (EIS), and not required to have a prepared EIS. Concerning licensing actions with decommissioning issues, the May 2001 letter states that NRC staff will use categorical exclusions listed in 10 CFR 51.22(c)(20) for sealed sources or small quantities of short-lived radionuclides. The May 7, 2001, letter heavily references the guidance for the use of categorical exclusions contained in Policy and Guidance Directive FC 84-20, Revision 1. Section III of FC 84-20 covers license actions that have been found to be within the safety envelope of previous license actions that qualified under categorical exclusion per 10 CFR 51.22(c)(14)(i) - (xvi).

Section III of FC 84-20 states, in part, that if a previous technical and/or license-based analysis had been performed which bounded the environmental radiological hazards to the public for the specific generic issue, and the Region believes its specific license action is within the safety envelope of the previous analysis, the Region can cite the previous generic analysis, document its rationale for making this assessment, and file copies of the previous analysis and its rationale in the license file. No coordination with NMSS is necessary.

(c) NUREG-1556, Vol. 20, Section 4.10: Licensing Actions Eligible for Categorical Exclusion

NUREG-1556, Vol. 20, Section 4.10.2, states that license actions that clearly qualify for categorical exclusion under the provision of 10 CFR 51.22 are not required to have an EA or documentation in the license file specific to the issue of the EA. Such categorically excluded license actions do not need to be coordinated with NMSS with regard to whether an EA is needed. License actions that qualify for categorical exclusion after the NRC staff has completed additional technical and/or license-based justifications do not need an EA, nor do they need to be coordinated with NMSS with regard to whether an EA is needed. The licensing staff is required to place in the license file, written justification to support the determination that an EA is not needed.

Section 4.10.2, states that license actions not specifically listed in Category 14 of 10 CFR 51.22 will require a TAR. The Regions should perform a technical assessment to justify why the license action qualifies for a categorical exclusion under 10 CFR 51.22(c)(14)(xvi). However, Section 4.10.3 states that the use of tracers in well-logging is specifically covered by the categorical exclusion in 10 CFR 51.22(c)(14)(xi).

(3) **An existing license condition allows Core Laboratories to dispose in earthen pits under a generic authorization to bury radioactive material.**

(a) Core Laboratories' License Condition 17

Core Laboratories' License Condition 17 states, in part, that the licensee is authorized to hold radioactive material with a half-life of less than 120 days for decay-in-storage (DIS) before disposal in ordinary trash. License Condition 17 was added to the license in January 1996 after the Division of Waste Management's (DWM) review of a Technical Assistance Request (TAR) that was written by RIV in June 1993.

(b) Generic Authorization for Radioactive Material Disposal per 10 CFR 20.2002

In 1993 Core Laboratories (ProTechnnics) requested a generic authorization to bury radioactive materials from well-logging sandouts, flowbacks, or any other form in an earthen pit pursuant to 10 CFR 20.2002. On December 18, 1995, DWM answered the TAR and approved the licensee's generic 10 CFR 20.2002 onsite burial request under a number of provisions including the following: (1) The licensee is required to assure that the concentration of radioactive material will be less than 1,000 pCi/gram. (2) The half-life of the radioactive material being disposed will be less than 120 days. Frac sands containing Cr-51, Rb-86, I-131, Xe-133, and I-131 had no further restrictions.

(3) For frac sands containing Sc-46, Zr-95, Sb-124, and Ir-192, the licensee is required to maintain access control over the burial site until the radioactivity has decayed to unrestricted release levels. (4) The licensee is required to use well-logging beads known as zero-wash, which are insoluble where the radioactivity will not migrate or leach into groundwater.

(c) Potential Doses to the Public from Onsite Burials

According to the 1995 TAR, the NRC reviewed the licensee's request for onsite burials at multiple locations in accordance with 10 CFR 20.2002. Potential doses to the public are required to be less than 100 millirem/year. In fact, the controls that the NRC set for the licensee assures that doses to the public from the onsite burials will not exceed 15 millirem/year. Also, the licensee is required to maintain records of the burial in accordance with 10 CFR 20.2108(a).

(4) **This proposal to inject well returns down Class II disposal wells is a safer than the current practice of placing radioactive waste into shallow earthen pits.**

(a) Earthen Pit Versus Class II Disposal Well

The licensee places several feet of soil over the disposal pit. There is more of a potential for access to these shallow pits by members of the public than Class II wells. Class II disposal wells must meet structural requirements and can be in excess of 250 feet deep. By regulatory design waste materials are injected into the wells, and only under extraordinary circumstances are waste materials recovered from Class II wells. The oil field owner and the licensee can maintain greater access control over a Class II disposal well. From an ALARA and occupational safety perspective, using Class II disposal wells instead of earthen pits are less risky.

(b) EA of the Radionuclides as Tracers in Enhanced Recovery of Oil & Gas (EOR)

NUREG/CR-3467, EA of the Radionuclides as Tracers in Enhanced Recovery of Oil and Gas (EOR) states that "EOR injection fluids into underground sources of drinking water are extremely unlikely because of strict underground injection control regulations (UIC). EOR operations are designated Class II wells and are subject to stringent construction, operating, monitoring, and reporting requirements."

(c) Class II Wells: EPA regulations 40 CFR144

Class II Wells are described in EPA regulations under 40 CFR 144.6 as "Wells which inject fluids which are brought to the surface in connection with natural gas storage operations or conventional oil or gas production."

Some of the EPA requirements on Class II disposal well operators are found in 40 CFR 144.28 and include the following: Compliance with the Safe Drinking Water Act; 24-hour reporting of non-compliance; well plugging & abandonment planning, financial

assurance; well casing & cementing; operating & monitoring requirements; records retention; and change of ownership & operational control.

For purposes of this discussion, understand that the EPA defines and classifies three types of waste; Hazardous Waste, Radioactive Waste, and Mixed Waste as follows:

- Hazardous Waste means a hazardous waste as defined in 40 CFR 261.3.
- Radioactive Waste means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2.
- Radioactive Mixed Waste: means a waste that contains both Resource Conservation and Recovery Act hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954, as amended. Hazardous waste containing radioactive wastes are no longer hazardous waste when it meets the eligibility criteria and conditions of 40 CFR 266, Subpart N.

Note that the licensee [Core Laboratories] proposes to dispose of material into Class II wells with radioactivity concentrations that are less than 30 percent of the levels in 10 CFR Part 20, Appendix B. These levels do not meet the EPA's definition of radioactive waste. In the EPA's classification of wells in 40 CFR 144.6, the disposal of radioactive waste is not addressed in Class II wells, but is addressed in Class I, III, and IV wells.

(d) State of Alaska Class II Disposal Well Requirements

A letter dated January 11, 2002, from the Alaska Oil & Gas Conservation Commission (AOGCC) confirmed that Marathon Oil Company's Class II disposal well, Kenai Unit 24-7 was allowed to inject waste returns with radioactive tracer material. The tracer material was Core Laboratories' "Zero Wash" product. This particular Class II well had been permitted under Disposal Injection Order No. 11 by the AOGCC in November 1996 under the provisions of 40 CFR Part 144. The letter states that the disposal of used tracer material did not qualify as Class II waste, and that Disposal Injection Order No. 11 did not relieve them from obtaining additional authorizations from other federal, state, or local authorities.

I spoke to the AOGCC engineer concerning Class II disposal wells. He explained that only oil and gas material returns (drill fluids including mud, sand, tracer residue, and other solids) are allowed to be injected into Class II disposal wells. The State issued permits for the construction and use of these wells. The user has to file an application, and the well has to meet aquifer, groundwater, and integrity testing requirements. In general, materials are injected into these disposal wells, and nothing is taken out of the wells.

I reviewed the AOGCC's program for the implementation of Class II well and underground injection control. The AOGCC's process includes the following: application, technical review of the permit by petroleum engineers and geologist, confining system determination, casing and cement requirements, integrity monitoring, application meeting between the AOGCC and operator, Commissioners' review, public hearing, and issuance of the injection order.

(e) State of Texas Class II Disposal Well Requirements

Core Laboratories provided the NRC a copy of their State of Texas license that allows them to discard well-logging "sandout" or other materials from oil and gas wells into Class II disposal wells.

I spoke to the Texas Bureau of Radiation Control (TBRC), former chief of Industrial Licensing Program, about the criteria they used for granting this licensed material disposal method. The TBRC representative explained that no specific rationale existed regarding their decision to amend the license for disposals in Class II wells. However, approval to inject radioactive well returns into Class II wells are granted by the Texas Railroad Commission, Environmental Section. I spoke to a representative of the Texas Railroad Commission and reviewed Texas requirements for Class II well disposals. The Texas Railroad Commission process includes the following: application; technical review of the permit; area determination; integrity monitoring and reporting; geological, casing, operating standard equipment, public hearing; and issuance of the permit.

All permit applications for Class II wells and disposal comes to the Environmental Services Section, where they are evaluated and processed. If required, the Environmental Services Section requests that a hearing be scheduled, and the Commission provides notice to all interested persons. After the hearing, the examiners recommend final action to the Commissioners to decide if the permit will be issued. If no protests are received on an application, the Director of Environmental Services may administratively approve the application.

Jack Whitten

-8-

Conclusions

Region IV believes that this LAR for an "Additional Disposal Alternative" for well-logging waste to be injected into Class II disposal wells is within the safety envelope of previous generic safety analyses. Specifically, the safety analysis referenced in the March 1984 Statement of Considerations for the 10 CFR 51.22(c)(14)(xi) well-logging categorical exclusion and DWM's December 1995 approval of Region IV's TAR for allowing a generic onsite disposal of well-logging waste are being cited as generic analyses supporting this determination. Additionally, the use of tracers in well-logging is specifically covered by the categorical exclusion in 10 CFR 51.22(c)(14)(xi). No further environmental review, assessment, or documentation are required based the guidance that is provided in Section 2 of this document and the Categorical Exclusion Checklist enclosed.

Enclosure: As stated

SEPARATOR SHEET



ProTechnics
6316 Windfern, Room 310
Houston, Texas 77040 USA
Tel: 713-328-2310
Fax: 713-328-2161
www.protechnics.com

TOM HAMPTON
President

RECEIVED

FEB - 1 2002

January 23, 2002

Mr. Jack E. Whitten
Senior Health Physicist
Nuclear Materials Licensing Branch
U.S. Nuclear Regulatory Commission
Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011-8064

Re: License No. 42-26928-01

Dear Mr. Whitten:

Enclosed are copies of letters that I e-mailed you about yesterday. For your reference also enclosed is a copy of the original letter sent to you asking for an amendment of our license for disposal into a Class II disposal well.

Please call me at above number as soon as you receive this letter or if you have any questions.

Thank you for your prompt attention in this matter.

Sincerely,

Tom Hampton
President

TH:ym

Enclosure

CLB
NYSE

468137



ProTechnics
6316 Windfern
Houston, Texas 77040 USA
Tel: 713-328-2320
Fax: 713-328-2163
www.protechnics.com

AUG 31 2000

August 23, 2000

Mr. Jack E. Whitten
Senior Health Physicist
Nuclear Materials Licensing Branch
U.S. Nuclear Regulatory Commission
Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011-8064

RE: License No. 42-26928-01

Dear Mr. Whitten:

The purpose of this letter is to request an amendment to our radioactive material license to allow an additional disposal alternative. Currently, we are allowed to place any well returns (containing radioactive tracer material) from a frac job in the on site earthen pit. In addition to this method, we would like approval to allow the well returns to be disposed of in a Class II Disposal Well permitted to accept non-hazardous oil & gas waste.

We are currently licensed in the State of Texas (copy enclosed) for this method of disposal. The oil customers we work with are requesting this method to save time and expense as they currently dispose of some well work over fluids by this method.

The half-life of the tracer material we will dispose of by this method will be less than 90 days. The maximum concentration of the tracer material in the well returns will be less than 1,000 pCi/gm. The transport of the well returns will be by an enclosed steel frac tank.

In addition, please amend the license to change the mailing address to:

6316 Windfern
Houston, Texas 77040

ADAMS # ML003758270
Template _____
Date 8/23/00 QC'd by _____

CLB
NYSE

468137

The post office changed the mailing address. The location of the facility remains the same.

If you have any questions or need additional information, please call.

Sincerely

A handwritten signature in cursive script that reads "Will Williams". The signature is written in dark ink and is positioned above the printed name and title.

Will Williams
Corporate Radiation Safety Officer

Enclosures



**Marathon
Oil Company**

Candance J. Walker
Attorney
Law - Health, Environment & Safety
5355 San Felipe Street (77056-2799)
P. O. Box 4813 (77210-4813)
Houston, Texas USA
Telephone: 713/296-2639
Fax: 713/296-4386
Email: CJWalker@MarathonOil.com

January 22, 2002

By Fax: 713/328-2161

Tom Hampton, President
ProTechnics
A Corc Laboratories Company
6316 Windfern, Rm. 310
Houston, Texas 77040

COPY

Re: NRC approval for injection in Non- Agreement States

Dear Mr. Hampton,

Marathon is writing to make a formal request that ProTechnics submit a request to the Nuclear Regulatory Commission (NRC) to allow disposal via injection of ProTechnics' patented radioactive tracers known as "Zero Wash". The NRC approval for injection will assist both Marathon and other ProTechnics customers in obtaining injection approval in affected non-agreement states.

As you know, Marathon submitted an approval for injection packet to the Alaska Oil and Gas Conservation Commission (AOGCC). Pursuant to your earlier discussions with Mark Susich, Marathon Alaska office, attached is a copy of Marathon's AOGCC approval letter for use as a supporting exhibit in your NRC request. Please send me a copy of your NRC approval request via fax at 713-296-4386 or mail to my attention at P. O. Box 4813, Houston, Texas 77210-4813. Also, please inform me when you receive the NRC authorization.

Marathon would like to see ProTechnics take prompt action on this issue. This is an important issue to Marathon. As you know, Marathon is a company dedicated to environmental compliance. Please feel free to contact my office with any questions.

Sincerely,

Candance J. Walker, Esq.

CJW:pph

cc: Mark Susich
Marathon-Anchorage

Mr. Tom Hampton
ProTechnics
January 22, 2002
Page 2 of 2.

cc: By Fax: 713/328-2163
Larry J. Stephenson, P.E., C.P.S.M.
ProTechnics
6315 Windfern
Houston, Texas 77040
Enclosure

STATE OF ALASKA

ALASKA OIL AND GAS CONSERVATION COMMISSION

JAN 15 2002
PATTON BOGGS LLP
TONY KNOWLES, GOVERNOR

333 W. 7th AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-0500
PHONE (407) 270-1433
FAX (407) 270-7842

January 11, 2002

Mr. Kyle Parker
Patton Boggs LLP
1031 West Fourth Avenue, Suite 504
Anchorage, AK 99501

COPY

Re: Class II Disposal of Tracer Returns

Dear Mr. Parker:

You have asked the Commission for confirmation that your client, Marathon Oil Company ("Marathon"), is permitted to dispose of certain radioactive tracer returns in the Kenai Unit 24-7 Class II disposal well.

Disposal Injection Order No. 11, issued by the Commission on November 21, 1996, authorizes the operator of the Kenai Unit 24-7 well to inject "Class II oil field fluids" in a specified interval of the well in conformance with 20 AAC 25. The Commission's regulation on underground disposal, 20 AAC 25.252, refers to 40 C.F.R. 144.6(b) for the classification of a Class II well. The latter provision, in turn, describes a Class II well, in relevant part, as a well that injects fluids

that are brought to the surface in connection with . . . conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

40 C.F.R. 144.3 provides that the term "[h]azardous waste means a hazardous waste as defined in 40 CFR 261.3." The latter regulation excludes the following from the definition of hazardous waste: "Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy." See 40 C.F.R. 261.3(a)(1) and 40 C.F.R. 261.4(b)(5).

Marathon has employed the firm ProTechnics to assist in evaluating well completions using ProTechnics' radioactive tracers known as "Zero Wash." You have informed the Commission that the tracers aid in detailing the completion placement and effectiveness of Marathon's hydraulic fracturing and acidizing treatments. You have also informed the Commission that the use and disposal of the radioactive tracers are regulated by the Nuclear Regulatory Commission.

Mr. Kyle Parker
January 11, 2002
Page 2 of 2

The Commission understands that sands returned to the surface may contain some Zero Wash tracer beads and that it is such sands that Marathon wishes to dispose of in the Kenai Unit 24-7 well. Since this material has been brought to the surface in connection with conventional oil or gas production operations, it appears to qualify as Class II waste. The second criterion listed in 40 C.F.R. 144.3, concerning classification as hazardous waste, may apply only to waste waters from gas plants. However, even if this criterion applies to the Zero Wash tracer returns, they appear to qualify as non-hazardous wastes under the exclusion for "wastes associated with the exploration, development, or production of crude oil [or] natural gas."

It should be noted that the disposal of *unused* tracer material is an entirely different matter. Such material would not appear to qualify as a Class II waste. The Commission understands that the only tracer material Marathon proposed to dispose of in the Kenai Unit 24-7 well is material that has actually been used downhole for bona fide well completion purposes.

Please note further that the Commission's authorization under Disposal Injection Order No. 11 does not relieve the operator from the responsibility to obtain any additional authorizations that may be required from federal, state, or local authorities.

Sincerely,

Carmy Dechli Taylor
Carmy Dechli Taylor
Chair

COT/jc

SEPARATOR SHEET



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

May 7, 2001

MEMORANDUM TO: George Pangburn, Director, Region I/DNMS
Douglas M. Collins, Director, Region II/DNMS
Cynthia D. Pederson, Director, Region III/DNMS
Dwight D. Chamberlain, Director, Region IV/DNMS

FROM: John T. Greeves, Director, Division of Waste Management, NMSS

SUBJECT: GUIDANCE ON THE PREPARATION OF ENVIRONMENTAL
ASSESSMENTS FOR LICENSING ACTIONS BY REGIONAL OFFICES

As you may be aware, my Division has lead responsibility for the review of Environmental Assessments (EAs) and the preparation of Environmental Impact Statements (EISs) for the Office of Nuclear Material Safety and Safeguards licensing actions, involving fuel cycle, uranium recovery, decommissioning, low level waste, and spent fuel facilities, to ensure consistency and compliance with the requirements of 10 CFR Part 51. The purpose of this memorandum is to inform staff in the regional offices of the approach that should be used for preparing EAs.

EAs must be prepared for all proposed licensing actions that are:

- not categorically excluded (10 CFR 51.22),
- not covered in an existing EIS, and
- not required to have an EIS prepared (10 CFR 51.20).

Guidance for the use of categorical exclusions is contained in Revision 1, Supplement to Policy and Guidance Directive FC 84-20: "Impact of Revision of 10 CFR Part 51 on Materials License Actions" (attached). That Supplement suggests that 10 CFR 51.22(c)(11) and (c)(14) could be used for decommissioning activities. However, because of a 1997 amendment to Part 51, references to Sections (c)(11) and (c)(14) are no longer appropriate for decommissioning actions. Users of the Supplement are hereby directed to use 10 CFR 51.22(c)(20) for decommissioning actions. The Supplement will be revised or replaced by other guidance documents to be issued within the next 3-4 months.

The categorical exclusion listed in 10 CFR 51.22(c)(20) pertaining to sealed sources or small quantities of short-lived radionuclides is the only categorical exclusion available for residual materials and releases associated with decommissioning. Such radionuclides include Tc-99m and I-131, among others. Written justification to support the use of categorical exclusions should be documented in the license file.

CONTACT: Melanie Wong, NMSS/DWM
(301) 415-6262



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON D C 20555-0001

FEB 9 1994

MEMORANDUM FOR: Those on Attached List

FROM: Carl J. Paperiello, Director
Division of Industrial and
Medical Nuclear Safety, NMSS

SUBJECT: REVISION 1, SUPPLEMENT TO POLICY AND GUIDANCE DIRECTIVE
FC 84-20: "IMPACT OF REVISION OF 10 CFR PART 51 ON
MATERIALS LICENSE ACTIONS"

This supplement replaces the supplement to FC 84-20 dated February 19, 1992, and provides guidance on materials license actions that qualify for categorical exclusion under 10 CFR 51.22(c)(14)(i) through (xv), and also guidance for determining when field studies and other materials license actions are eligible for categorical exclusion in accordance with 10 CFR 51.22(c)(14)(xvi).

BACKGROUND:

Licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review include those actions listed in § 51.22(c)(14)(xvi), which states:

(14) Issuance, amendment, or renewal of materials licenses issued pursuant to 10 CFR parts 30, 31, 32, 33, 34, 35, 36, 39, 40 or part 70 authorizing the following types of activities:

(xvi) Any use of source, byproduct, or special nuclear material not listed above which involves quantities and forms of source, byproduct, or special nuclear material similar to those listed in paragraphs (c)(14)(i) through (xv) of this section (Category 14)

If a particular materials license action does not fall under a categorical exclusion in §§ 51.22(c)(14)(i) through (xv), it may still be eligible for exclusion under § 51.22(c)(14)(xvi). However, as stated in the March 1, 1984 memorandum, from the Deputy Director, Office of Nuclear Material Safety and Safeguards (NMSS), (See Attachment to PG&D FC 84-20), the Commission has directed the staff, in a Staff Requirement Memorandum, dated February 28, 1984, to prepare:

"a written memorandum explaining why the action qualifies for the categorical exclusion (emphasis in original) selected. The written memorandum shall include a discussion of the factors listed in the

Attachment

MEMORANDUM FOR: Those on Attached List

C. H. Hehl, Director
Division of Radiation Safety and Safeguards, RI

J. Philip Stohr, Director, Director
Division of Radiation Safety and Safeguards, RII

William L. Axelson, Director
Division of Radiation Safety and Safeguards, RIII

Dwight D. Chamberlain, Acting Director
Division of Radiation Safety and Safeguards, RIV

Ross A. Scarano, Director
Division of Radiation Safety and Safeguards, RV

John E. Glenn, Chief
Medical, Academic, and Commercial
Use Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Frederick C. Combs, Chief
Operations Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Robert L. Baer, Chief
Source Containment and Devices Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Charles J. Haughney, Chief
Storage & Transport Systems Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Multiple Addressees

MAR 9 1994

selected subsections' and shall become part of the permanent docket or record relating to that action."

This written memorandum should be signed by the Director, Division of Industrial and Medical Nuclear Safety (IMNS), NMSS, or his delegate, and should be included in the license file.

As noted in Policy and Guidance Directive (PG&D) FC 84-20, the NRC may prepare an EA or statement in any case as it deems appropriate, regardless (emphasis added) of whether it is covered by a categorical exclusion. The preparation of all EAs or statements for materials license actions needs to be coordinated with NMSS.

GUIDANCE:

Guidance on the use of categorical exclusions is provided below in three sections for convenience: (i) Exclusions under § 51.22(c)(14)(i) through (xv), (ii) Exclusions under § 51.22(c)(14)(xvi), and (iii) Exclusions based on license actions found to be within the safety envelope of previous license actions that qualified under i and ii.

I. License Actions That Qualify for Categorical Exclusion Under § 51.22(c)(14)(i) through (xvi)

Since these license actions do not need an EA, coordination with NMSS with regard to an EA normally is not needed. However, in the case of novel or unusual license applications in this category, the regions should consult with NMSS, at an early stage of the review, on the possible need for an EA.

(A) License actions that clearly qualify for categorical exclusion under §§ 51.22(c)(14)(i) through (xv) - Such license actions, except for license termination actions (see Section I.(B)(i) below), do not need an EA or documentation in the license file with regard to the issue of an EA. Nor do such license actions need to be coordinated with NMSS with regard to whether an EA is needed.

(B) License actions that qualify for categorical exclusion under §§ 51.22(c)(14)(i) through (xv) based on additional technical and/or license-based justifications - Such license actions do not need an EA. Nor do such license actions necessarily need to be coordinated with NMSS with regard to whether an EA is needed. Unless otherwise stated below, the licensing staff needs to place, in the license file, written justification to support the determination that an EA is not needed. Examples of license actions which will need either documentation or justification are discussed below.

The "selected subsections" are §§ 51.22(c)(9), (c)(11), or (c)(14)(xvi). For materials licensees, the only exclusion that applies is § 51.22(c)(14)(xvi).

(i) All license termination actions - Documentation is required regardless of whether a license termination action clearly qualifies for a categorical exclusion under §§ 51.22(c)(14)(i) through (xv).

(a) For routine license termination actions that clearly qualify for categorical exclusion under §§ 51.22(c)(14)(i) through (xv), the close out survey and the submitted form NRC-314 which certifies the proper disposition of the licensee's radioactive materials, are sufficient documentation. Additional documentation for more complex license termination actions will be determined by the regions on a case-by-case basis. Only complex license termination actions, such as a license action that requires the submittal of a decommissioning plan (e.g., 10 CFR 30.36(c)(2)(i)), will require documentation of the justification to support why an EA is not needed. In many cases, such license actions need to be coordinated with the Division of Low-Level Waste and Decommissioning (LLWM) of NMSS (see Section (c) below). LLWM is responsible for providing the justification for any license termination action the regions has coordinated with LLWM.

(b) For license actions that qualify for categorical exclusion under §§ 51.22(c)(14)(i) through (xv) based on additional technical and/or license-based justification, the licensing staff will need to place in the license file, justification to support a determination that an EA is not needed. License termination actions for this group of licenses, if the justification has already been provided for the license, can follow section (a) above. Otherwise, the necessary justification needs to be placed in the license file.

(c) LLWM will coordinate with IMNS for the determination on whether an EA is needed (see Enclosure C), on those actions which have been referred to them. Unless otherwise noted, the regions can use LLWM's responses to them concerning decommissioning activities as the region's justification to support a determination that an EA is not needed.

(ii) The performance of field studies in which licensed material originating onsite is deliberately released directly into the environment for the purposes of the study - If a research and development or academic institution application proposes to release to the environment radioactive materials that originated onsite (i.e., within the controlled property of the licensee), an EA is normally not needed and is covered under categorical exclusion § 51.22(c)(14)(v) provided²:

² Even if a particular license action will meet these criteria, the Region can request NMSS to make a determination on whether a Sholly-type notice should be issued (see footnote 3 below).

(a) All releases, originating onsite, to the environment (e.g., air and liquid effluents, direct radiation from deposition of radioactive materials from the release (e.g., groundshine), etc.) comply with ALARA and Part 20 requirements.

(b) To assist in demonstrating compliance with the requirements of 10 CFR Part 20, the licensee should set ALARA goals for air effluents at a modest fraction of the values in Appendix B, Table 2, Columns 1 and 2, to §§ 20.1001-20.2401. Experience indicates that values of about 10 millirems per year from all of the licensee's radioactive air effluents should be practicable for almost all materials facility licensees (see Regulatory Guide 8.37). Therefore, as a first step toward demonstrating compliance with ALARA for radioactive air effluents, the licensee demonstrates that the nearest member of the general public receives no more than 10 millirems per year from all of the licensee's radioactive air effluents (i.e., licensee demonstrates it meets the Environmental Protection Agency's air emission standard).

(c) All releases onsite comply with all applicable decommissioning requirements (e.g., decommissioning recordkeeping requirements pursuant to 10 CFR 30.35(g), etc.) and current decommissioning policies.

Documentation that supports the licensee's application as meeting the above criteria is sufficient to support why an EA is not needed. For license actions that cannot meet the above criteria, the regions should coordinate with IMNS to determine whether an EA is needed. For example, an EA would be required for discrete sources released to the environment, that originated onsite, and which may not be recovered at the conclusion of the study or decommissioning.

II. License Actions That Qualify For Categorical Exclusion Under § 51.22(c)(14)(xvi)

All license actions that qualify for categorical exclusion under § 51.22(c)(14)(xvi) will require a Technical Assistance Request (TAR) to IMNS. The Director, IMNS, or his delegate, will respond to the TAR with a memorandum to the region that originated the TAR. In addition, the Director, IMNS, or his delegate, may choose to publish a notice in the FEDERAL REGISTER, similar to that required by 10 CFR 50.91(a)³, on the availability, to the public, of the IMNS memorandum. Upon completion of all IMNS actions, the IMNS memorandum is to be included in the official license file.

³ These FR notices are commonly referred to as Sholly Notices, which declare to the public that no significant hazards, based on staff analysis, will result following the approval of such license actions.

MAR 9 1984

(A) Field Studies - Supplemental information to the Final Rule (49 CFR, 9352, March 12, 1984,) page 9377, for "use of radioactive materials for research and development and for educational purposes" concerning categorical exclusion § 51.22(c)(14)(v) states:

"This categorical exclusion does not encompass (a) processing or manufacturing, (b) performance of field studies in which licensed material is deliberately released directly into the environment for purposes of the study, or (c) use of radioactive tracers in field flood studies involving secondary and tertiary oil and gas recovery:"

Thus, field studies in which licensed material is deliberately released directly into the environment,⁴ for purpose of the study, or use of radioactive tracers in field flood studies involving secondary and tertiary oil and gas recovery, cannot, by themselves, qualify for categorical exclusion under § 51.22(c)(14)(v). However, if such studies qualify for categorical exclusion under § 51.22(c)(14)(xvi), an EA will not be needed. Enclosure A gives an example of a field study which did not require an EA.

To expedite the processing of the TAR, the Regions should perform an initial technical assessment, to be enclosed with the TAR, to justify why the field study qualifies for categorical exclusion under § 51.22(c)(14)(xvi). Enclosure B provides the type of information that should be submitted to assist the Director, IMNS, or his delegate, in developing the necessary documentation, to be placed in the licensee's file, as directed by the Commission under categorical exclusion § 51.22(c)(14)(xvi).

(B) Others - Paragraph 51.22(c)(14)(xvi) of 10 CFR Part 51 can also be used for license actions, other than field studies, as justification for not performing an EA. A TAR to IMNS will be needed. The Regions should perform either an initial technical assessment or provide the license-based rationale (i.e., based on the licensing, inspection, and other information) on why the particular license action qualifies for categorical exclusion under § 51.22(c)(14)(xvi). Enclosures C and D give examples of the type of information that should be submitted to the Director, IMNS, or his delegate, in developing the necessary documentation, to be placed in the licensee's file, as directed by the Commission for not performing an EA under categorical exclusion § 51.22(c)(14)(xvi).

III. License Actions That Have Been Found To Be Within The Safety Envelope Of Previous License Actions That Qualified Under Categorical Exclusion §§ 51.22(c)(14)(i) through (xvi)

⁴ The staff interprets these releases to be those that originated offsite.

Multiple Addressees

6

9:994

If a previous technical and/or license-based analysis had been performed which bounded the environmental radiological hazards to the public for the specific generic issue and the Region believes its specific license action is within the safety envelope of the previous generic analysis, the Region can cite the previous generic analysis, document its rationale for making this assessment, and file copies of the previous analysis and its rationale in the license file. No coordination with NMSS is necessary. If the previous analysis referenced categorical exclusion § 51.22(c)(14)(xvi), the documentation shall include the original memorandum from the Director, IMNS, or his delegate.

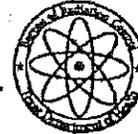


Carl J. Paperiello, Director
Division of Industrial and
Medical Nuclear Safety, NMSS

Enclosures:

- A. Memo fm C. Paperiello to R. Bellamy dtd 12/8/93
- B. Note fm D. Howe to File dtd 11/23/93
- C. Memo fm C. Paperiello to W. Axelson dtd 11/16/93
- D. Memo fm C. Paperiello to C. Hehl dtd 10/20/93

SEPARATOR SHEET



RADIOACTIVE MATERIAL LICENSE

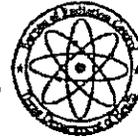
Pursuant to the Texas Radiation Control Act and Texas Health Department regulations on radiation, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess and transfer radioactive material listed below; and to use such radioactive material for the purpose(s) and at the place(s) designated below. This license is subject to all applicable rules, regulations and orders of the Texas Department of Health (Agency) now or hereafter in effect and to any conditions specified below.

LICENSEE		This license is issued in response to a letter	
1. Name	PROTECHNICS DIVISION OF CORE LABORATORIES INC ATTN WILL C WILLIAMS	Dated: March 3, 2000	Signed by: Larry J. Stephenson
2. Address	1160 DAIRY ASHFORD SUITE 444 HOUSTON TX 77079	3. License Number L03835	Amendment Number 37
PREVIOUS AMENDMENTS ARE VOID			

RADIOACTIVE MATERIAL AUTHORIZED	4. Expiration Date August 31, 2005
--	---------------------------------------

5. Radioisotope	6. Form of Material	7. Maximum Activity*	8. Authorized Use
A. Any radioactive material with atomic number less than 83 and with a half-life less than 120 days	A. Any (except sealed sources)	A. No single unit quantity to exceed 40 mCi Total activity of any single radioisotope not to exceed 2 Ci.	A. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
B. Ir-192/Ir-194	B. Any (except sealed sources)	B. No single unit quantity to exceed 40 mCi of either isotope Total: 15 Ci	B. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
C. Sc-46	C. Any (except sealed sources)	C. No single unit quantity to exceed 40 mCi Total: 4000 mCi	C. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
D. Sb-124	D. Any (except sealed sources)	D. No single unit quantity to exceed 40 mCi Total: 4000 mCi	D. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
E. Kr-85	E. Any (except sealed sources)	E. No single unit quantity to exceed 20 Ci Total: 40 Ci	E. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
F. Co-60	F. Any (except sealed sources)	F. No single unit quantity to exceed 20 mCi Total: 500 mCi	F. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.

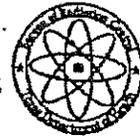
* Ci-Curies mCi-Millicuries μ Ci-Microcuries



RADIOACTIVE MATERIAL LICENSE

LICENSE NUMBER	AMENDMENT NUMBER
L03835	37

5. Radioisotope (continued)	6. Form of Material (continued)	7. Maximum Activity* (continued)	8. Authorized Use (continued)
G. H-3	G. Any (except sealed sources)	G. No single unit quantity to exceed 20 Ci Total: 300 Ci	G. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
H. C-14	H. Any (except sealed sources)	H. No single unit quantity to exceed 20 mCi Total: 1 Ci	H. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
I. P-32	I. Any (except sealed sources)	I. No single unit quantity to exceed 20 Ci Total: 100 Ci	I. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
J. Cl-36	J. Any (except sealed sources)	J. No single unit quantity to exceed 20 mCi Total: 500 mCi	J. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
K. Fe-55	K. Any (except sealed sources)	K. No single unit quantity to exceed 20 mCi Total: 500 mCi	K. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
L. Co-58	L. Any (except sealed sources)	L. No single unit quantity to exceed 20 mCi Total: 500 Ci	L. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
M. Ni-63	M. Any (except sealed sources)	M. No single unit quantity to exceed 20 mCi Total: 500 mCi	M. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
N. Sr-90	N. Any (except sealed sources)	N. No single unit quantity to exceed 20 mCi Total: 500 mCi	N. Tracer studies in oil, gas and geothermal wells. Field flood studies and inter-well tracer studies.
O. Ir-192, Sb-124, Sc-46	O. Zero Wash* beads	O. No single source to exceed 50 µCi	O. Collar markers in gas and oil wells.



RADIOACTIVE MATERIAL LICENSE

LICENSE NUMBER	AMENDMENT NUMBER
L03835	37

S. Radioisotope (continued)	6. Form of Material (continued)	7. Maximum Activity* (continued)	8. Authorized Use (continued)
P. Co-60	P. Metal Strips	P. No single source to exceed 50 μ Ci	P. Collar markers in gas and oil wells.
Q. Cs-137	Q. Solid	Q. No single source to exceed 50 μ Ci	Q. Collar markers in gas and oil wells.
R. Am-241	R. Sealed source (Gtrn Model AN-HP; GN Model VL-1; BEBIG Model Am.G11)	R. No single source to exceed 250 μ Ci	R. Calibration and stabilization source in Halliburton TSCAN logging tool.
S. Ba-133	S. Sealed source (IPL Model HEG-133)	S. No single source to exceed 2 mCi	S. Calibration/stabilization source in Cedar Bluff Group fluid identification tool.
T. Am-241	T. Sealed source (IPL Model HEG-241)	T. No single source to exceed 250 μ Ci	T. Calibration/stabilization source in Halliburton TSCAN logging tool.

9. The licensee shall comply with the provisions (as amended) of Title 25 Texas Administrative Code (TAC) §289.201, §289.202, §289.203, §289.204, §289.205, §289.252, §289.253 and §289.257.

10. Radioactive material shall only be stored at:

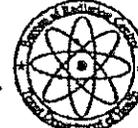
Site Number	Location
004	Kilgore - 2505 Highway 42 North
005	Houston - 1160 Dairy Ashford, Suite 444
006	Alice - 815 Commerce Street
007	Midland - 2001 Commerce Street
008	Houston - 9830 Rosprim

11. The licensee shall limit storage of Ir-192 and Ir-194 to 5000 mCi at all storage locations except the Kilgore, Texas facility which is authorized to maintain no more than 15 Ci of Ir-192 and Ir-194 total. This condition does not supersede the maximum allowable activity as authorized in Part B of Condition 7.

12. The authorized place of use is at temporary sites, in areas not under exclusive Federal jurisdiction, throughout Texas.

13. In addition to the possession limits in Condition 7, the licensee shall further restrict the possession of licensed material to quantities below the limit specified in 25 TAC §289.252(u)(4)(C) for establishing decommissioning financial assurance.

14. Radioactive material shall be used by, or under the direct supervision of, individuals designated by the Radiation Safety Officer (RSO) only after each worker has successfully completed an Agency accepted training course. Documentation verifying the successful completion of the training for each worker shall be maintained by the licensee for inspection by the Agency.



RADIOACTIVE MATERIAL LICENSE

LICENSE NUMBER	AMENDMENT NUMBER
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15. The individual designated to perform the functions of RSO for activities covered by this license is Will C. Williams.
16. Radioactive material shall not be stored or used at a permanent site unless that site is specifically authorized on this license. A site is considered permanent if radioactive material is stored and/or used at that location for more than 90 days in any twelve month period.

In accordance with 25 TAC §289.202(o)(1) and §289.202(ddd)(1), the licensee is hereby exempted from limits required in 25 TAC §289.202(ggg)(2) and §289.2029(ggg)(8), when radioactive material is released during a "sandout" or when material must otherwise be reversed out of a gas or oil well. The released material shall be handled and/or disposed in a manner outlined in the procedures submitted with the application dated July 27, 1995, or discarded in a Class I disposal well for nonhazardous waste.

18. Individuals involved in operations which utilize, during any 24 hour period, more than 50 mCi of I-125 and/or I-131 or unvented laboratory operations involving 10 mCi of I-125 and/or I-131 in a noncontained form shall have bioassays performed within one week or if the use of I-125 and/or I-131 is on a continual basis, bioassays shall be performed once every two weeks. Records of the bioassays shall be maintained for inspection by the Agency and the action points listed below shall be observed.

A. Whenever the thyroid burden at the time of measurement exceeds 0.12 μ Ci of I-125 or 0.04 μ Ci of I-131, the following actions shall be taken:

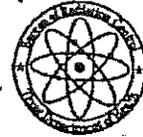
- (1) An investigation of the operations involved, including ventilation surveys shall be carried out to determine the causes of exposure and to evaluate the potential for further exposures.
- (2) If the investigation indicates that further work in the area might result in exposure of a worker to concentrations that are excessive, the licensee shall restrict the worker from further exposure until the source of exposure is discovered and corrected.
- (3) Corrective actions that will eliminate or lower the potential for further exposures shall be implemented.
- (4) A repeat bioassay shall be taken within 1 week of the previous measurement in order to confirm the effectiveness of the corrective action taken or to verify internal radioiodines present.
- (5) Reports or notification shall be provided as required by 25 TAC §289.202(yy) and §289.202(aaa).

B. If the thyroid burden at any time exceeds 0.5 μ Ci of I-125 or 0.14 μ Ci of I-131, the following actions shall be taken:

- (1) Prevent the individual from any further handling of I-125 or I-131 until the thyroid burden is below the above limits.
- (2) Carry out all steps described above.
- (3) As soon as possible, refer the case to appropriate medical consultation for recommendations regarding therapeutic procedures that may be carried out to accelerate removal of radioactive iodine from the body. This should be done within two to three hours after exposure when the time of exposure is known so that any prescribed thyroid blocking agent would be effective.
- (4) Carry out repeated measurements at approximately one week intervals at least until the thyroid burden is less than 0.12 μ Ci of I-125 or 0.04 μ Ci of I-131.



Texas Department of Health
BUREAU OF RADIATION CONTROL



AUG 3 1 3 1997

RADIOACTIVE MATERIAL LICENSE

LICENSE NUMBER	AMENDMENT NUMBER
L03835	37

19. Individuals involved in operations which utilize, at any one time, more than 100 mCi of tritium in a noncontained form, other than metallic foil, shall have bioassays performed within one week following a single operation and at weekly intervals for continuing operations.
20. The licensee is authorized to discard all radioactive material authorized in Conditions 5, 6, 7 and 8 and listed in 25 TAC §289.202(ggg)(7), whose half lives do not exceed 300 days, in a Type I municipal solid waste site in accordance with the provisions of 25 TAC §289.202(fff)(4) and procedures submitted with application dated July 27, 1995.
21. The licensee is hereby exempted from the requirements of 25 TAC §289.253(n)(1)(D) only for users of radioactive material authorized in Part R of Conditions 5, 6, 7 and 8. The licensee shall maintain a separate utilization log containing, as a minimum, the make and model number and/or serial number (or if absent, a unique description) of each sealed source authorized by Part R of Conditions 5, 6, 7 and 8 removed from storage, the identity of the logging supervisor receiving the sources of radiation, the locations where used and dates of use. These utilization logs shall be kept available for inspection by the Agency for five years from the date of the recorded event.
22. Except as specifically provided otherwise by this license, the licensee shall possess and use the radioactive material authorized by this license in accordance with statements, representations, and procedures contained in the following:

application dated July 27, 1995,
 letters dated September 23, 1995, March 14, 1997, April 28, 1997, June 16, 1997, July 14, 1997,
 January 7, 1998, March 3, 2000, May 23, 2000 and
 letter received September 9, 1998 with attached letter dated November 11, 1994.

Title 25 TAC §289 shall prevail over statements contained in the above documents unless such statements are more restrictive than the regulations.

WPS:da

FOR THE TEXAS DEPARTMENT OF HEALTH

Date: July 24, 2000

David B. Fogle, Chief
Industrial Licensing Program

468137

Remarks:

Region IV Reviewer: Louis C. Carson II, Sr. Health Physicist, DNMS
Region IV Reviewer: Jack E. Whitten, Sr. Materials Analyst, DNMS
Reviewer Code: L83112

Request Needed by: 02/21/03

bcc:
EWMerschhoff
TPGwynn
KEBrockman
CLCain
JEWhitten, SMA
DACool, NMSS/INMS
JBCarrico, NMSS/INMS/MSIB
SLMerchant, NMSS/INMS/RGB
LCCarsonII
NMLB
FCDB
RIV Nuclear Materials File - 5th Floor.

DOCUMENT NAME: S:\DNMS\nm\lcc\CORELAB-TAR.wpd
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RIV:NMLB		C:NMLB		SMA:DNMS		D:DNMS	
LCCarsonII <i>ALC</i>		CLCain <i>CLC</i>		JEWhitten <i>JEW</i>		KEBrockman <i>KB</i>	
				<i>ALL TELE 1/24/03</i>			
01/24/03		01/24/03		01/24/03		01/24/03	

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4006

November 4, 2003

Core Laboratories, Inc.
dba ProTechnics Division of Core Laboratories
ATTN: Will C. Williams
Radiation Safety Officer
9830 Rosprim
Houston, TX 77040

SUBJECT: LICENSE AMENDMENT

Please find enclosed Amendment No. 30 to License No. 42-26928-01. You should review this license carefully and be sure that you understand all conditions. If you have any questions, you may contact me at (817) 860-8221 or via e-mail lcc1@nrc.gov.

This amendment authorizes an additional disposal alternative pursuant to 10 CFR 20.2002 to inject well returns (sandouts) containing radioactive tracer material with physical half-lives of the material is 120 days or less (sodium-24, scandium-46, chromium-51, rubidium-86, antimony-124, iodide-131, xenon-133, iridium-192, or gold-198) into Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by State agencies.

Attached for your perusal is a copy of the Federal Register (Volume 68, Number 208) dated October 28, 2003, publishing the results of NRC's environmental assessment (EA). The Federal Register indicates that NRC staff completed its assessment of your proposed disposal in Class II wells of sandouts containing radioactive tracer materials. The staff made a finding of no significant impact (FONSI) to the environment.

NRC expects licensees to conduct their programs with meticulous attention to detail and a high standard of compliance. Because of the serious consequences to employees and the public that can result from failure to comply with NRC requirements, you must conduct your radiation safety program according to the conditions of your NRC license, representations made in your license application, and NRC regulations. In particular, note that you must:

1. Operate by NRC regulations 10 CFR Part 19, "Notices, Instructions and Reports to Workers; Inspection and Investigations," 10 CFR Part 20, "Standards for Protection Against Radiation," and other applicable regulations.
2. Notify NRC in writing of any change in mailing address.

3. By 10 CFR 30.36(b) and/or license condition, notify NRC, promptly, in writing, and request termination of the license:
 - a. When you decide to terminate all activities involving materials authorized under the license; or
 - b. If you decide not to complete the facility, acquire equipment, or possess and use authorized material.
4. Request and obtain a license amendment before you:
 - a. Change Radiation Safety Officers;
 - b. Order byproduct material more than the amount or form authorized on the license;
 - c. Add or change the areas or address(es) of use identified in the license application or on the license; or
 - d. Change the name or ownership of your organization.
5. Submit a complete renewal application or termination request at least 30 days before the expiration date on your license. You will receive a reminder notice approximately 90 days before the expiration date. Possession of radioactive material after your license expires is a violation of NRC regulations.

In addition, please note that NRC Form 313 requires the applicant, by signature, to verify that the applicant understands that all statements contained in the application are true and correct to the best of the applicant's knowledge. The signatory for the application should be the licensee or certifying official rather than a consultant.

NRC will periodically inspect your radiation safety program. Failure to conduct your program according to NRC regulations, license conditions, and representations made in your license application and supplemental correspondence with NRC may result in enforcement action against you. This could include issuance of a notice of violation; imposition of a civil penalty; or an order suspending, modifying, or revoking your license as specified in the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG 1600.

Core Laboratories, Inc.

-3-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, and your response (if any) will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Thank you for your cooperation.

Sincerely,

/RA/

Louis C. Carson II, Health Physicist
Nuclear Materials Licensing Branch

Docket: 030-30429
License: 42-26928-01
Control: 468137

Enclosures: As stated

MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

Licensee	In accordance with letter dated August 23, 2000
1. Core Laboratories, Inc. dba ProTechnics Division of Core Laboratories	3. License number 42-26928-01 is amended in its entirety to read as follows:
2. 9830 Rosprim Houston, Texas 77040	4. Expiration date January 31, 2006
	5. Docket No. 030-30429 Reference No.

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
A. Iodine-131	A. Any	A. 500 millicuries
B. Iridium-192	B. Any	B. 5000 millicuries
C. Scandium-46	C. Any	C. 3000 millicuries
D. Gold-198	D. Any	D. 5000 millicuries
E. Zirconium-95	E. Any	E. 500 millicuries
F. Xenon-133	F. Any	F. 500 millicuries
G. Chromium-51	G. Any	G. 1500 millicuries
H. Antimony-124	H. Any	H. 2000 millicuries
I. Rubidium-86	I. Any	I. 3000 millicuries
J. Bromine-82	J. Any	J. 3000 millicuries
K. Hydrogen-3	K. Any	K. 999 millicuries
L. Sodium-24	L. Any	L. 2000 millicuries
M. Americium-241	M. Sealed Source (Gammatron Model AN-HP, Gulf Nuclear Model VL-1)	M. No single source to exceed 250 microcuries, total possession 100 millicuries
N. Americium-241	N. Sealed Source (Isotope Products Model HEG-241 Series, Capsule A-3015)	N. No single source to exceed 50 millicuries
O. Barium-133	O. Sealed Source (Isotope Products Model HEG-133 Series, Capsule A-3015)	O. No single source to exceed 2 millicuries, total possession 200 millicuries

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**

License Number
42-26928-01

Docket or Reference Number
030-30429

Amendment No. 30

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
P. Cesium-137	P. Sealed Source (Isotope Products Model HEG-137 Series, Capsule A-3015)	P. No single source to exceed 200 millicuries, total possession 20 curies
Q. Cesium-137	Q. Sealed Source (Isotope Products Model HEG-137 Series, Capsule A-3015)	Q. No single source to exceed 600 millicuries
R. Cesium-137	R. Any	R. 50 microcuries
S. Cobalt-60	S. Any	S. 50 microcuries
T. Iridium-192	T. Any	T. 50 microcuries
U. Scandium-46	U. Any	U. 50 microcuries
V. Antimony-124	V. Any	V. 50 microcuries

9. Authorized use:

- A. through K. For use in tracer studies in oil and gas wells.
- A., J., and L. For use in above ground tracer studies.
- M. and N. For use as a calibration/stabilization source in Halliburton Model TSCAN logging tool for logging tracer material in oil and gas wells.
- O. and P. For use as a calibration/stabilization source in Cedar Bluff Group's Fluid Identification logging tool for logging tracer material in oil and gas wells.
- Q. For use in oil and gas well logging.
- R. through V. For use in pipe collar markers in oil and gas wells.

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

CONDITIONS

10. Radioactive material shall be used only at the following:

- A. 1930 Elk Street, Rock Springs, Wyoming; Natrona County International Airport, 3857 Dame, Casper, Wyoming; Alaska Department of Natural Resources Deadhorse Tract 57, Spine Road, Prudhoe Bay, Alaska.
- B. License materials may be stored at Shell Offshore, Inc. Gas Well: OSG-C 11553, Well No. 2, Field: Garden Banks Block 602, Offshore Louisiana, in accordance with letter December 16, 1999, pending final abandonment.
- C. Temporary job sites anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.

If the jurisdiction status of a Federal facility within an Agreement State is unknown, the licensee should contact the federal agency controlling the job site in question to determine whether the proposed job site is an area of exclusive Federal jurisdiction. Authorization for use of radioactive materials at job sites in Agreement States not under exclusive Federal jurisdiction shall be obtained from the appropriate state regulatory agency.

11. Licensed material identified in Item 6.L. may be temporarily stored in accordance with letter dated August 10, 1998.
12. A. Licensed material shall be used by, or under the supervision and in the physical presence of, individuals who have completed the Support Consultants and Associates, Inc., F. L. Clifford Associates, Sharp Radiation Services, W. H. Henkin Industries, Inc., Amersham/Gulf Nuclear, Inc., or ProTechnics Environmental Services, Inc., training courses and have been designated by the Radiation Safety Officer.
B. The Radiation Safety Officer for this license is Will C. Williams.
13. The licensee shall not vacate or release to unrestricted use a field office or storage location whose address is identified in Condition 10, without prior NRC approval.
14. The licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."
15. Pursuant to 10 CFR 39.91, the licensee is exempted from the requirements of 10 CFR 39.63(b) for use of remote handling tools. This exemption will remain in effect until formally withdrawn by the NRC.

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

16. Notwithstanding the requirements of 10 CFR 39.47 and pursuant to 10 CFR 39.91, and in accordance with the statements, representations and procedures contained in letter dated July 14, 1997, and February 4, 1998, the licensee may use radioactive markers with activities of 50 microcuries or less of iridium-192, scandium-46, antimony-124, cobalt-60, and cesium-137 as pipe collar markers in oil and gas wells.
17. The licensee is authorized to hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal in ordinary trash provided:
- Radioactive waste to be disposed of in this manner shall be held for decay a minimum of 10 half-lives.
 - Before disposal as ordinary trash, byproduct material shall be surveyed at the container surface with the appropriate meter set on its most sensitive scale and with no interposed shielding to determine that its radioactivity cannot be distinguished from background. All radiation labels shall be removed or obliterated.
 - A record of each disposal permitted under this License Condition shall be retained for 3 years. The record must include the date of disposal, the date on which the byproduct material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.
18. Notwithstanding the requirements of 10 CFR 20.2007, pursuant to 10 CFR 20.2002, and in accordance with the statements, representations, and procedures contained in correspondence dated August 23, 2000, January 23, 2002, and October 30, 2003, the licensee may release well-logging sandouts and well returns, containing residual radioactive materials, into Class II Disposals Wells provided:
- The total radioactive concentration of all isotopes is 1,000 picocuries/gram or less, and the physical half-life of the radioactive material is 120 days or less.
 - The residual radioactive tracer material (sodium-24, scandium-46, chromium-51, rubidium-86, antimony-124, iodide-131, xenon-133, iridium-192, or gold-198) being disposed of will be in the form of the patented "Zero-Wash" product in sandouts or well returns.
 - The well has been Permitted by the State, Territory, or Federal jurisdiction to accept non-hazardous oil and gas waste regardless of whether the job site is in an area where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.
 - The licensee maintains an agreement with the owner or operator to control access to the Class II Disposal Well until the radioactivity has decayed to unrestricted release levels.

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

19. Except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The U.S. Nuclear Regulatory Commission's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.

- A. Application dated November 15, 1991
- B. Facsimile dated November 25, 1991
- C. Letter dated February 14, 1992
- D. Letter dated March 1, 1993
- E. Letter dated April 12, 1993
- F. Letter dated May 4, 1993
- G. Letter dated October 26, 1993
- H. Letter dated April 20, 1994
- I. Letter dated May 6, 1994
- J. Letter dated May 19, 1994
- K. Letter dated May 26, 1994
- L. Letter dated October 20, 1994
- M. Letter dated January 4, 1995
- N. Letter dated January 11, 1995
- O. Letter dated June 13, 1995, authorization of new facility only.
- P. Letter dated June 13, 1995, authorization to use the Model TSCAN
- Q. Letter dated September 12, 1995
- R. Letter dated September 27, 1995
- S. Letter dated October 26, 1995
- T. Letter dated January 17, 1996
- U. Letter dated February 13, 1996
- V. Letter dated February 24, 1997
- W. Letter dated July 14, 1997
- X. Letter dated November 14, 1997
- Y. Letter dated January 20, 1998
- Z. Letter dated January 27, 1998
- AA. Letter dated February 4, 1998
- BB. Letter received May 20, 1998
- CC. Letter dated July 15, 1998
- DD. Letter dated August 10, 1998
- EE. Letter dated August 31, 1999
- FF. Letter dated December 16, 1999
- GG. E-mail dated February 11, 2000
- HH. Letter dated March 3, 2000
- II. Letter dated June 5, 2000
- JJ. Letter dated June 15, 2000
- KK. Facsimile dated July 6, 2000
- LL. E-mail dated February 14, 2000

**MATERIALS LICENSE
SUPPLEMENTARY SHEET**License Number
42-26928-01Docket or Reference Number
030-30429

Amendment No. 30

19. (Continued)

- MM. Letter dated May 22, 2000
- NN. Letter dated August 22, 2001
- OO. Letter dated November 7, 2001
- PP. Letter dated August 23, 2000

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Date November 4, 2003

By _____

/RA/

Jack E. Whitten, Chief
Division of Nuclear Materials Safety
Region IV
Arlington, Texas 76011

Sostar, Janelle K

From: Kendra L. Smith <klsmith@smithbutzlaw.com>
Sent: Tuesday, March 29, 2016 4:58 PM
To: DC, OpenRecords
Subject: Right to Know Law Appeal 4600-16-029(NW)
Attachments: Filed NW Appeal 3-29-16.pdf

Dear Sir/Madame,

Please find attached a Right to Know Law Appeal of Denial for request 4600-16-029(NW). Please contact me if you have any questions.

Thank you

Kendra L. Smith, Esq.
Smith Butz, LLC
Attorneys at Law
125 Technology Drive, Suite 202
Bailey Center I, Southpointe
Canonsburg, PA 15317
Phone: (724) 745-5121
Fax: (724) 745-5125
Email: klsmith@smithbutzlaw.com
Web: www.smithbutzlaw.com

CONFIDENTIALITY NOTICE: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please notify the sender by return email and delete this email from your system. Thank you.

Exhibit D

2



March 30, 2016

Via E-Mail only:

Kendra L. Smith, Esquire
Smith Butz, LLC
125 Technology Drive, Ste. 202
Bailey Center I
Canonsburg, PA 15317
klsmith@smithbutzlaw.com

Via E-Mail only:

Dawn Schaefer
Agency Open Records Officer
PA Dept. of Environmental Protection
Rachel Carson State Office Bldg.
PO Box 8473
Harrisburg, PA 17105
EP-DEP-RTK@pa.gov

RE: OFFICIAL NOTICE OF APPEAL – **DOCKET #AP 2016-0604**

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on March 29, 2016. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law, and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR’s website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by 11:59:59 p.m. seven (7) business days from the date of this letter. Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day. The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the docket number above on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

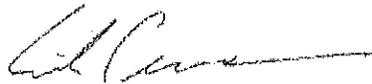
Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice to the OOR within seven (7) business days from the date on this letter.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

If you have any questions about the appeal process, please contact the assigned Appeals Officer (contact information is enclosed) – and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

IF YOU ARE OBJECTING TO THE DISCLOSURE OF YOUR HOME ADDRESS, DO NOT PROVIDE THE OFFICE OF OPEN RECORDS WITH YOUR HOME ADDRESS. PROVIDE AN ALTERNATE ADDRESS IF YOU DO NOT HAVE ACCESS TO E-MAIL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Jill S. Wolfe, Esquire

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

PHONE:

(717) 346-9903

FACSIMILE:

(717) 425-5343

E-MAIL:

JiWolfe@pa.gov

**Preferred method of contact
and submission of information:**

EMAIL

**Please direct submissions and correspondence related
to this appeal to the above Appeals Officer. Please include the case
name and docket number on all submissions.**

**You must copy the other party on everything you submit
to the OOR.**

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties
are encouraged to review prior final determinations involving similar records
and fees that may impact this appeal.

Exhibit E

Exhibit E

1



RECEIVED

MAR 29 2016

RIGHT-TO-KNOW LAW ("RTKL")
APPEAL OF DENIAL, PARTIAL DENIAL, OR DEEMED DENIAL

OFFICE OF OPEN RECORDS

Office of Open Records ("OOR")
Email: openrecords@pa.gov
Fax: (717) 425-5343

Commonwealth Keystone Building
400 North St., 4th Floor
Harrisburg, PA 17120-0225

Today's Date: March 29, 2016

Requester Name(s): Kendra L. Smith, Esq.

Address/City/State/Zip: 125 Technology Drive, Suite 202, Bailey Center I, Canonsburg, PA 15317

Email: ksmith@smithbutzlaw.com Phone/Fax: 724-745-5121 / 724-745-5125

Request Submitted to Agency Via: [X] Email [] Mail [] Fax [] In-Person (check only one)

Date of Request: February 1, 2016 Date of Response: March 9, 2016 [] Check if no response

Name of Agency: Pennsylvania Department of Environmental Protection - Southwest Region

Address/City/State/Zip: 400 Waterfront Drive, Pittsburgh, PA 15222

Email: N.A Phone/Fax: 412-442-4000 / N/A

Name & Title of Person Who Denied Request (if any): Ronald A. Schwartz, Assistant Regional Director

I was denied access to the following records (REQUIRED. Use additional pages if necessary): 1,641 responsive documents. The Position Statement attached hereto outlines the denial in greater detail.

I requested the listed records from the Agency named above. By signing below, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am also appealing for the following reasons (Optional. Use additional pages if necessary): See the attached Position Statement.

- [X] I have attached a copy of my request for records. (REQUIRED)
[X] I have attached a copy of all responses from the Agency regarding my request. (REQUIRED)
[X] I have attached any letters or notices extending the Agency's time to respond to my request.
[] I hereby agree to permit the OOR an additional 30 days to issue a final order.
[] I am interested in resolving this issue through OOR mediation. This stays the initial OOR deadline for the issuance of a final determination. If mediation is unsuccessful, the OOR has 30 days from the conclusion of the mediation process to issue a final determination.

Respectfully submitted, [Signature] (SIGNATURE REQUIRED)

You should provide the Agency with a copy of this form and any documents you submit to the OOR.



DEP Right-to-Know Law Record Request Form

Business Hours: 8:00 am - 4:30 pm (RTK requests received after 4:30 pm are considered received the next business day)
Mail to: DEP Open Records Officer ("AORO"), DEP/BOS, PO Box 8473, Harrisburg, PA 17105-8473.
Or Fax to: 717-705-8023
Or Email to: EP-DEP-RTK@pa.gov *Request sent to any other email will not be deemed a RTKL request.
Contact: 717-787-2043

Name of Requestor (or Anonymous): Kendra L. Smith, Esq.
Name of Company (or N/A): Smith Butz, LLC
Requestor's Street Address: 125 Technology Drive, Suite 202, Bailey Center I
Requestor's City/State/Zip Code: Canonsburg, PA 15317
Requestor's Telephone Number: (724) 745-5121
Requestor's Email Address: ksmith@smithbutzlaw.com

Records being requested (please sufficiently describe the record(s) requested so that they are identifiable to Department staff.):

Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP
 Name of Individual / Company for records being requested (including former names)

Yeager Drill Site

Facility Name for requested records (if different than Company Name)

McAdams Road, Washington, PA 15301
 Street Address (including zip code)

Washington
 County(ies)

Amwell
 Municipality(ies)

Additional information to assist with search and retrieval of responsive records (e.g. permit no.(s); dates or timeframe of records requested; programs of interest, geographic area):

Please see, "Attachment 1," attached hereto.

FORM OF RECORD PRODUCTION – check appropriate response:

REQUESTING FILE REVIEW ACCESS:

Seeking access, review and self copying of records is at a reduced cost of \$.15 per page. YES NO

REQUESTING DUPLICATION AND MAILING RECORDS:

Agency copying of records is at a cost of \$.25 per page YES NO

REQUESTING CERTIFICATION OF RECORDS:

I WANT DEP TO CERTIFY RECORDS (AT A COST OF \$5.00 PER REQUEST): YES

PENNSYLVANIA – OFFICE OF OPEN RECORDS
RIGHT-TO-KNOW REQUEST

“ATTACHMENT 1”

Any and all approvals, permits; licenses/licensures, applications for permits and/or licenses, reciprocity letters, reciprocity licenses, reciprocity agreements and/or reciprocity arrangements, including, but not limited to all licenses issued by the Pennsylvania Department of Environmental Protection (“PA DEP”) to Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP (hereinafter, “Protechnics”) for use, storage and possession of radioactive materials and/or other licensed material. Additionally, this request seeks any and all investigation reports, Notices of Violation(s), Consent Order and Agreement(s) issued to Protechnics by the PA DEP and/or between Protechnics and the PA DEP for any and all work or services performed by Protechnics at any natural gas well site in the Commonwealth of Pennsylvania. Included in this request is a request for copies of all Notices of Violation issued by the PA DEP to Protechnics, including but not limited to Notices of Violation dated 06/15/10, 01/28/10, 11/26/13, 09/13/13 and 10/14/13, Violation Numbers 677913, 677915, 677914, 682834, 682833, 682829, 682835 and all corresponding inspection reports, field notes and other related writings. Further, this request seeks any and all Consent Order and Agreements between the PA DEP and Protechnics, including, but not limited to, Consent Orders and Agreements dated November 2, 2013 and November 2, 2010.

Additionally, this request includes a request for copies of all enforcement activity taken by the PA DEP against Protechnics, including but not limited to Enforcement ID Number 305057, 259202 and 263973, as well as all inspection reports completed by the PA DEP regarding Protechnics, including, but not limited to, Inspection ID Numbers 1891418, 1919964, 2147772, 2204156 and 2221258.

This request further seeks any and all Radioactive Tracer Well Site Agreements made between Protechnics and any well site operator(s) for each and every well traced in the Commonwealth of Pennsylvania that is or was submitted to the PA DEP, including, but not limited to, the April 7, 2013 Radioactive Tracer Well Site Agreement between Protechnics and a well operator.

In addition to the above, this request seeks any and all notifications submitted to the PA DEP by Protechnics or the associated operator or subcontractor regarding Protechnics confirmation that licensed material, including, but not limited to, radioactive material, was returned to the surface at any well site in which Protechnics operated/performed work or services in the Commonwealth of Pennsylvania.

Additionally, this request seeks any and all documents, correspondence, e-mails and any other communication(s) between Protechnics and the PA DEP and/or Range Resources and the PA DEP regarding Protechnics and any and all work/services performed in the Commonwealth of Pennsylvania by Protechnics.

Further, this request seeks any and all MSDS/SDS (material data safety sheets and safety data sheets) in the possession of the PA DEP regarding any and all products utilized by Protechnics at

any well site in Pennsylvania, including, but not limited to, all MSDS/SDS for Protechnics Radioactive Tracer Products, as well as any and all Chemical Frac Tracer ("CFT") products, including, but not limited to, CFT 1000, CFT 1100, CFT 1200, CFT 1300, CFT 2000, CFT 2100, CFT 1900, CFT 1700.



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

March 9, 2016

CERTIFIED MAIL NO. 7003 2260 0005 8731 2497

Kendra L. Smith, Esquire
Smith Butz, LLC
125 Technology Drive, Suite 202, Bailey Center 1
Canonsburg, PA 15317

Re: Right-to-Know Request Numbers: 1400-16-071 (CO), 4100-16-0027 (SE), 4200-16-023 (NE), 4300-16-019 (SC), 4400-16-010 (NC), **4500-16-018 (SW)**, 4600-16-029 (NW)

Dear Attorney Smith:

On February 1, 2016, the open-records officer of the Department of Environmental Protection (Department) received your written request for records and assigned it the tracking numbers listed above. The subject of your request required its assignment to the Department's Central Office (CO), and the Southeast (SE), Northeast (NE), Southcentral (SC), Northcentral (NC), Southwest (SW), and Northwest (NW) Regional Offices. However, for purposes of this final response, the Department's SW Regional Office is responding on its own behalf to your request under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 (RTKL). You will receive final correspondence under separate cover from the other assigned offices.

You requested records for Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP located at the Yeager Drill Site, McAdams Road, Washington, Pennsylvania. You are seeking:

- Any and all approvals, permits, licenses/licensures, applications for permits and/or licenses, reciprocity letters, reciprocity licenses, reciprocity agreements and/or reciprocity arrangements, including, but not limited to all licenses issued by the Department to Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP (hereinafter, "Protechnics") for use, storage and possession of radioactive materials and/or other licensed material. Additionally, this request seeks any and all investigation reports, Notices of Violation(s), Consent Order and Agreement(s) issued to Protechnics by the Department and/or between Protechnics and the Department for any and all work or services performed by Protechnics at any natural gas well site in the Commonwealth of Pennsylvania. Included in this request is a request for copies of all Notices of Violation issued by the Department to Protechnics, including but not limited to Notices of Violation dated June 15, 2010, January 28, 2010, November 26, 2013, September 13, 2013 and October 14, 2013, Violation Numbers 677913, 677915, 677914, 682834, 682833, 682829, 682835 and all corresponding inspection reports, field notes and other related writings. Further, this request seeks any and all Consent Order and Agreements between the Department and Protechnics, including, but not limited to, Consent Orders and Agreements dated November 2, 2013 and November 2, 2010.

- Copies of all enforcement activity taken by the Department against Protechnics, including but not limited to Enforcement ID Numbers 305057, 259202 and 263973, as well as all inspection reports completed by the Department regarding Protechnics, including, but not limited to, Inspection ID Numbers 1891418, 1919964, 2147772, 2204156 and 2221258.
- Any and all Radioactive Tracer Well Site Agreements made between Protechnics and any well site operator(s) for each and every well traced in the Commonwealth of Pennsylvania that is or was submitted to the Department, including, but not limited to, the April 7, 2013, Radioactive Tracer Well Site Agreement between Protechnics and a well operator.
- Any and all notifications submitted to the Department by Protechnics or the associated operator or subcontractor regarding Protechnics confirmation that licensed material, including, but not limited to, radioactive material, was returned to the surface at any well site in which Protechnics operated/performed work or services in the Commonwealth of Pennsylvania.
- Any and all documents, correspondence, e-mails and any other communication(s) between Protechnics and the Department and/or Range Resources and the Department regarding Protechnics and any and all work/services performed in the Commonwealth of Pennsylvania by Protechnics.
- Any and all MSDS/SDS (material data safety sheets and safety data sheets) in the possession of the Department regarding any and all products utilized by Protechnics at any well site in Pennsylvania, including, but not limited to, all MSDS/SDS for Protechnics Radioactive Tracer Products, as well as any and all Chemical Frac Tracer ("CFT") products, including, but not limited to, CFT 1000, CFT 1100, CFT 1200, CFT 1300, CFT 2000, CFT 2100, CFT 1900, CFT 1700.

By your email on February 3, 2016, to Department Legal Counsel Edward Stokan of the Department's SW Regional Office, you amended your RTKL request to the following:

- All drill sites in the Commonwealth, including but not limited to the Yeager Drill site as indicated in attachment 1 of the original request.

An initial response to your request was due on February 8, 2016. On that date, the Department notified you that it required an additional 30 days, until March 9, 2016, to respond to your request.

Your request is denied for the following legally permissible reasons:

Public Safety and Security.

Radioactive materials files cannot be released to the public for public safety and security reasons. A radioactive materials license, related complaint, incident report, inspection report, any notice of violation regarding radioactive materials and the company employees' names and contact information who manage the radioactive material are exempt from disclosure under multiple provisions of the RTKL. Disclosing the contents of these records would reveal specific information pertaining to the nature and location of radioactive materials.

Pursuant to Section 708(b)(2) of the RTKL, a record is exempt from access by a requester if the record is "maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity" 65 P.S. § 67.708(b)(2).

Furthermore, Section 708(b)(3) of the RTKL provides that a record is exempt from access by a requester if disclosure of the record "creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, [or] infrastructure" 65 P.S. § 67.708(b)(3).

The disclosure of a license's contents, incident report, and any inspection report could reasonably lead to public safety risks. The license and reports provide detailed information about the specific location and the security measures taken to protect radioactive materials. Moreover, radioactive materials files generally contain information identifying radioactive source possessed, the quantity or type of source, activity of the source, location of the source, identity of individuals authorized to have access to or use of the source, and similar sensitive information. Information contained within these files would give a determined adversary the means to actually do harm to others.

An individual could utilize the information in the license and reports to unlawfully obtain the radioactive materials for illicit purposes thus creating a major security and health breach. If an individual with criminal intent obtained these materials or should an individual re-publish the information contained within a license and reports which was subsequently obtained by someone with criminal intent, the public's health and safety could be severely compromised.

The SW Regional Office has withheld approximately 1,641 pages of records that would otherwise be responsive to your request. The information of concern within these records specifically includes the licensees' names, license numbers, physical addresses, ProTechnics' employees' identities, ProTechnics' employees' email addresses, types of sources, activities of sources, quantities of sources, locations of sources, use of sources or modalities, names of authorized users, contact names at the site, license-specific information, inspection reports, SW Regional Office staff who have knowledge of the sources, and documentation of security controls implemented at the site to prevent unauthorized access to the sources.

Internal, Predecisional Deliberation Exception.

The Department denies your request to records that reflect its predecisional, internal deliberations, because such records are exempt from production under the RTKL. 65 P.S. § 67.708(b)(10).

Section 708(b)(10)(i)(A) of the RTKL states that a Commonwealth agency can withhold records that reflect, "The internal, pre-decisional deliberations of an agency, its members, employees or officials or pre-decisional deliberations between agency members, employees or officials and members, employees or officials of another agency..., contemplated or proposed policy or course of action of any research, memos or other documents used in the predecisional deliberations." 65 P.S. § 67.708(b)(10)(i)(A). According to the language of Section 708(b)(10)(i), protected records must be internal, predecisional, and deliberative. *McGowan v. Dep't of Env'tl. Protection*, 103 A.3d 374 (Pa. Cmwlth. 2014).

Furthermore, in addition to protecting records that are internal, predecisional deliberations, Section 708(b)(10)(i)(A) also protects records that "reflect" deliberations. Although "reflect" is not expressly defined in the RTKL, it was discussed at length by the Commonwealth Court in *Office of the Governor v. Scolforo*, 65 A.3d 1095 (Pa. Cmwlth. 2013) (*en banc*) (*Scolforo*). The Court stated:

[W]e recognize that the General Assembly utilized the specific term "reflect," 65 P.S. § 67.708(b)(10) (*emphasis added*), and did not use the term "reveal." The term *reflect* means "mirror" or "show," while the term *reveal* means "to make publicly or generally known" or, in other words, "disclose." *Webster's Third New International Dictionary* 1908, 1942 (2002). Given the broad meaning of the term *reflect*, as opposed to *reveal*, and the fact that the General Assembly chose the term *reflect* when providing for the predecisional deliberative exception, we must interpret the exception as written.

Scolforo, 65 A.3d at 1101-1102.

Accordingly, the General Assembly's specific use of the word "reflect" in the internal, predecisional deliberation exception of the RTKL signifies that there is no requirement that the deliberated course of action be detailed, set forth, or summarized in a record in order to confer this protection. 65 P.S. § 67.708(b)(10)(i)(A). Thus, a record is protected from disclosure even if it reflects the agency's deliberations.

Consequently, of the approximately 1,641 pages of records that are being withheld, as described above, 35 pages are also exempted from disclosure because these records reflect the Department's internal, predecisional deliberative records or were relied upon by the Department as part of its internal, predecisional deliberative process. The records withheld pertain to internal correspondence among Department employees reflecting the decision making process regarding enforcement actions, draft letters, draft notices of violations, and meeting notes. These records

are internal, prior to any final decision, and do not reflect the final determination of the Department.

Regulatory Preclusion to the Release of Records.

The Department's regulations pertaining to radiologic health specify that among those records not available for public inspection are "[a] report of an investigation ... which would disclose the institution, progress or results of an investigation undertaken by the Department." 25 Pa. Code § 215.14(2). Under the RTKL, the presumption of an agency record being public does not apply if a record is exempt from disclosure under any state law or regulation. 65 P.S. § 67.305(a)(3). Consequently, the regulatory inability to release inspection reports by the Department's radiation protection program and records for the radioactive materials general license registration, constitutes an additional basis to withhold approximately 1,240 pages of the approximately 1,641 pages of records that are being withheld, as described above.

Noncriminal Investigation.

The noncriminal investigation exceptions of 65 P.S. §§ 67.708(b)(17)(i) and (ii) exempt from disclosure: (i) Complaints submitted to an agency; and (ii) Investigative materials, notes, correspondence and reports. Section 708(b)(17)(vi)(A) through (E) further exempts records, that, if disclosed, would do one or more of the following:

- (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
- (B) Deprive a person of the right to an impartial adjudication.
- (C) Constitute an unwarranted invasion of privacy.
- (D) Hinder an agency's ability to secure an administrative or civil sanction.
- (E) Endanger the life or physical safety of an individual.

Section 305(a) of the Radiation Protection Act states:

The department or its duly authorized representatives shall have the power to enter at all reasonable times with sufficient probable cause upon any public or private property, building, premise or place, for the purposes of determining compliance with this act, any license conditions or any rules, regulations or orders issued under this act. In the conduct of an investigation, the department or its duly authorized representatives shall have the authority to conduct tests, inspections or examination of any radiation source, or of any book, record, document or other physical evidence related to the use of a radiation source.

35 P.S. § 7110.305(a).

Section 215.12 of the Radiation Regulations states:

(a) *Maintenance of records.* Licensees and registrants shall maintain records under this article and have these records available for inspection by the Department at permanent sites or facilities of use identified in a license or registration issued under this article.

(b) *Rights of the Department.* The Department and its agents and employees will:

(1) Have access to, and require the production of, books, papers, documents and other records and physical evidence pertinent to a matter under investigation.

(2) Require a registrant or licensee to make reports and furnish information as the Department may prescribe.

(3) Enter the premises of a licensee or registrant for the purpose of making an investigation or inspection of radiation sources and the premises and facilities where radiation sources are used or stored, necessary to ascertain the compliance or noncompliance with the act and this chapter and to protect health, safety and the environment.

(c) *Inspections and investigations by the Department.* The Department, its employees and agents may conduct inspections and investigations of the facilities and regulated activities of registrants of radiation-producing machines and licensees of radioactive material necessary to demonstrate compliance with the act or this article.

(d) *Additional inspections and investigations.* The Department, its employees and agents may conduct additional follow-up inspections and investigations if violations of the act or regulations promulgated thereunder were noted at the time of the original inspection, or if a person presents information, or circumstances arise which give the Department reason to believe that the health and safety of a person is threatened or that the act or this article are being violated.”

25 Pa. Code § 215.12

To substantiate the RTKL noncriminal investigation exception under 65 P.S. § 67.708(b)(17), an agency must demonstrate that a systematic or searching inquiry, a detailed examination, or an official probe was conducted regarding a noncriminal matter. *Dep't of Env'tl. Protection v. Delaware Riverkeeper Network*, 113 A.3d 869 (Pa. Cmwlth. 2015). Additionally, records created by the Department, or gathered from outside sources and used as part of its investigation, are also exempt from disclosure. *John v. Dep't of Env'tl. Protection*, No. AP-2011-0657 (Pa. O.O.R.D. July 8, 2011).

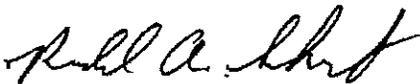
Of the approximately 1,641 pages of records that are being withheld, as described above, approximately 40 pages are also exempted from disclosure because they include inspection reports prepared by the Department's radiation protection program, internal pre-enforcement documents, and reviews of the radioactive materials general license registration. These records prompted the SW Regional Office to conduct an official probe at the facility and conduct a detailed examination of the registration documents under the Department's statutory and regulatory authority within the Radiation Protection Act, 35 P.S. § 305(a) and Radiation Protection Regulations, 25 Pa. Code § 215.12. Consequently, the disclosure of those reports would reveal the SW Regional Office's institution, progress or result of an agency's investigations pertaining to routine inspections, noncompliance inspections or complaint-driven inspections, which are conducted within its statutory authority.

However, you have a right to appeal this response in writing to the Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) all Department responses;
- 2) your request; and
- 3) the reason why you think the Department is wrong in its response.

Also, the OOR has an appeal form available on the OOR website at: <http://www.openrecords.pa.gov/Using-the-RTKL/Pages/RTKLForms.aspx#.Voa6lRwo7X5>.

Sincerely,



Ronald A. Schwartz, P.E., BCEE
Assistant Regional Director
Southwest Regional Office

Enclosure



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

February 8, 2016

VIA EMAIL

Kendra L. Smith, Esquire
Smith Butz, LLC
125 Technology Drive, Suite 202, Bailey Center 1
Canonsburg, PA 15317
klsmith@smithbutzlaw.com

Re: Right-to-Know Request Numbers: 1400-16-071 (CO), 4100-16-0027 (SE), 4200-16-023 (NE), 4300-16-019 (SC), 4400-16-010 (NC), 4500-16-018 (SW), 4600-16-029 (NW)

Dear Attorney Smith:

On February 1, 2016, the open-records officer of the Department of Environmental Protection (Department) received your written request for records and assigned it the tracking numbers listed above. The subject of your request requires its assignment to the Department's Central Office (CO) and the Southeast (SE), Northeast (NE), Southcentral (SC), Northcentral (NC), Southwest (SW), and Northwest (NW) Regional Offices. Each office has its own tracking number and may respond separately to your request for records in their possession. For purposes of this letter, the Department's CO is initially responding on behalf of all assigned offices under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 (RTKL).

You requested records for Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP located at the Yeager Drill Site, McAdams Road, Washington, Pennsylvania. You are seeking:

- Any and all approvals, permits, licenses/licensures, applications for permits and/or licenses, reciprocity letters, reciprocity licenses, reciprocity agreements and/or reciprocity arrangements, including, but not limited to all licenses issued by the Department to Core Laboratories d/b/a Protechnics, Division of Core Laboratories, LP (hereinafter, "Protechnics") for use, storage and possession of radioactive materials and/or other licensed material. Additionally, this request seeks any and all investigation reports, Notices of Violation(s), Consent Order and Agreement(s) issued to Protechnics by the Department and/or between Protechnics and the Department for any and all work or services performed by Protechnics at any natural gas well site in the Commonwealth of Pennsylvania. Included in this request is a request for copies of all Notices of Violation issued by the Department to Protechnics, including but not limited to Notices of Violation dated June 15, 2010, January 28, 2010, November 26, 2013, September 13, 2013 and October 14, 2013, Violation Numbers 677913, 677915, 677914, 682834, 682833, 682829, 682835 and all corresponding inspection reports, field notes and other related writings. Further, this request seeks any and all Consent Order and Agreements between the Department and Protechnics, including, but not limited to, Consent Orders and Agreements dated November 2, 2013 and November 2, 2010.

- Copies of all enforcement activity taken by the Department against Protechnics, including but not limited to Enforcement ID Numbers 305057, 259202 and 263973, as well as all inspection reports completed by the Department regarding Protechnics, including, but not limited to, Inspection ID Numbers 1891418, 1919964, 2147772, 2204156 and 2221258.
- Any and all Radioactive Tracer Well Site Agreements made between Protechnics and any well site operator(s) for each and every well traced in the Commonwealth of Pennsylvania that is or was submitted to the Department, including, but not limited to, the April 7, 2013, Radioactive Tracer Well Site Agreement between Protechnics and a well operator.
- Any and all notifications submitted to the Department by Protechnics or the associated operator or subcontractor regarding Protechnics confirmation that licensed material, including, but not limited to, radioactive material, was returned to the surface at any well site in which Protechnics operated/performed work or services in the Commonwealth of Pennsylvania.
- Any and all documents, correspondence, e-mails and any other communication(s) between Protechnics and the Department and/or Range Resources and the Department regarding Protechnics and any and all work/services performed in the Commonwealth of Pennsylvania by Protechnics.
- Any and all MSDS/SDS (material data safety sheets and safety data sheets) in the possession of the Department regarding any and all products utilized by Protechnics at any well site in Pennsylvania, including, but not limited to, all MSDS/SDS for Protechnics Radioactive Tracer Products, as well as any and all Chemical Frac Tracer ("CFT") products, including, but not limited to, CFT 1000, CFT 1100, CFT 1200, CFT 1300, CFT 2000, CFT 2100, CFT 1900, CFT 1700.

By your email on February 1, 2016, to Department Legal Counsel, Edward Stokan, you amended your RTKL request to the following:

- All drill sites in the Commonwealth, including but not limited to the Yeager Drill site as indicated in attachment 1 of the original request.

Under the RTKL, a written response to your request is due on or before February 8, 2016.

This is an interim response. Under the provisions of 65 P.S. §67.902(b)(2), you are hereby notified that your request is being reviewed for the reasons listed below and the Department will require up to an additional 30 days, until March 9, 2016, to issue a final response to your request.

- o Compliance with your request may require the redaction of certain information that is not subject to access under RTKL.
- o Your request is under legal review to determine whether a requested record is a "public record" for purposes of the RTKL.

- The extent or nature of the request precludes a response within the required time period.

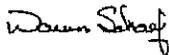
If you have requested an estimate of cost, the Department will only advise of prepayment costs if record production exceeds \$100.00. 65 P.S. § 1307(h). Otherwise, requested records will be produced and billed accordingly. If you are concerned about copying costs, you may wish to withdraw this request and conduct an informal file review. An informal file review allows self-copying at the reduced rate of \$.15 per page for standard size pages and provides you the opportunity to review and copy only those records you desire rather than all records the Department deems responsive to your request.

Further information about informal files reviews can be found at: <http://www.dep.pa.gov/Citizens/PublicRecords/Pages/Informal-File-Review.aspx#.VpAasxwo7X4>. An informal file review does not preclude you from filing a RTKL request at a later date.

Lastly, if you elected to have records copied and mailed to you, the estimated or actual total for any fees owed when the record becomes available will be included in the Department's subsequent response. Prepayment is required before providing access when the estimated cost to fulfill a request exceeds \$100.00. 65 P.S. § 67.1307(h).

If you have any questions regarding this letter, please contact me.

Sincerely,



Dawn Schaeff
Agency Open Records Officer

cc: RTK CO Legal via email
RTK CO COM, OG, RP via email
RTK SE NE SC NC SW NW via email

[Print](#) | [Close Window](#)

Subject: FW: New Right-to-Know Law Record Request Received - Kendra L. Smith, Esq. (565)
From: "EP, Right-to-Know" <EP-DEP-RTK@pa.gov>
Date: Mon, Feb 01, 2016 10:53 am
To: "klsmith@smithbutzlaw.com" <klsmith@smithbutzlaw.com>
Cc: "EP, Right-to-Know" <EP-DEP-RTK@pa.gov>
Attach: RTKPDF.565.pdf

Attorney Smith-
Your attachment was not attached to your RTKL request. Please reply back to this email with your attachment. Thank you.

Agency Open Records Office
Department of Environmental Protection | Bureau of Office Services
Rachel Carson State Office Building
400 Market St | Hbg PA 17101
Phone: 717.787.2043 | Fax: 717.705.8023
www.dep.pa.gov

-----Original Message-----

From: ep-dep-rtk@pa.gov [mailto:ep-dep-rtk@pa.gov]
Sent: Monday, February 01, 2016 10:28 AM
To: EP, Right-to-Know
Subject: New Right-to-Know Law Record Request Received - Kendra L. Smith, Esq. (565)

A new Right-to-Know Law Record Request has been Received. A copy of the request has been attached to this e-mail.

Subject: Your Right-to-Know Law Request Has Been Received by DEP
From: ep-dep-rtk@pa.gov
Date: Mon, Feb 01, 2016 10:28 am
To: klsmith@smithbutzlaw.com
Attach: RTKPDF.565.pdf

Thank you for your Right-to-Know Law submission that will be forwarded to the Agency Open Records Officer (AORO) for processing.

If you wish to modify a pending Right-to-Know Law request, do not complete another online form. A second online submittal will not modify your original request. Instead, please send an e-mail to ep-dep-rtk@pa.gov and we will assist you with modifying your original request.

Please note that your request is deemed received on the Department's next business day if:

- Your request was submitted after 4:30 p.m. Monday-Friday,
- Your request was submitted during a weekend,
- Your request was submitted on a holiday observance recognized by the Commonwealth, or
- Your request was submitted any time Executive Offices are closed as a result of weather or any other emergency.

The Department will contact you no later than five business days from the receipt of your request as to its status. If you have any further questions on this process, please visit the Department's webpage at:
http://www.portal.state.pa.us/portal/server.pl/community/public_records/19207

Thank you.

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Danser, Judi

From: Stokan, Edward
Sent: Wednesday, February 03, 2016 2:58 PM
To: EP, Right-to-Know
Cc: Barnett, Jacqueline Conforti (DEP); Cantwell, John
Subject: FW: February 1, 2016 RTKL Request re ProTechnics 1400-16-071, 4100-16-0027, 4200-16-023, 4300-16-019, 4400-16-010, 4500-16-018, 4600-16-029

From: Kendra L. Smith [<mailto:klsmith@smithbutzlaw.com>]
Sent: Wednesday, February 03, 2016 2:50 PM
To: Stokan, Edward
Subject: RE: February 1, 2016 RTKL Request re ProTechnics

It is for all drill sites in the Commonwealth including but not limited to the Yeager Drill site as indicated in attachment 1. Thank you.

Kendra L. Smith, Esq.
Smith Butz, LLC
Attorneys at Law
125 Technology Drive, Suite 202
Bailey Center I, Southpointe
Canonsburg, PA 15317
Phone: (724) 745-5121
Fax: (724) 745-5125
Email: klsmith@smithbutzlaw.com
Web: www.smithbutzlaw.com

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----- Original Message -----

Subject: February 1, 2016 RTKL Request re ProTechnics
From: "Stokan, Edward" <estokan@pa.gov>
Date: Wed, February 03, 2016 2:46 pm
To: "klsmith@smithbutzlaw.com" <klsmith@smithbutzlaw.com>

Your February 1, 2016 Right-to-Know Law request indicates that the "Facility name for requested records" is the "Yeager Drill Site."

However, your Attachment 1 indicates that you are seeking responsive records as to any natural gas well site in the Commonwealth.

Can you please confirm whether you seek records pertaining only to the Yeager Drill Site or pertaining to all gas well sites throughout the Commonwealth?

Edward S. Stokan | Assistant Counsel
Department of Environmental Protection | Office of Chief Counsel
Southwest Regional Office
400 Waterfront Drive | Pittsburgh, PA 15222
Phone: 412.442.4262 | Direct Phone: 412.442.4249 | Fax: 412.442.4274
www.depweb.state.pa.us

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ATTORNEY WORK PRODUCT

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**POSITION STATEMENT IN SUPPORT OF APPEAL TO DENIAL OF RTKL
REQUEST 4500-16-018 (SW)**

Kendra L. Smith, Esquire (the "Requester") submits this Position Statement in support of this Appeal of the Department of Environmental Protection's ("Department") March 9, 2016 denial of Right to Know Request 4500-16-018 (SW).

GENERAL BACKGROUND

On February 1, 2016, the Requester submitted a Right to Know Request ("Request") to the Department seeking records related to activities of Core Laboratories d/b/a ProTechnics, Division of Core Laboratories at drill sites in the Commonwealth of Pennsylvania, including, but not limited to, the Yeager Drill site in Amwell Township, Washington County, Pennsylvania where ProTechnics was hired to inject radioactive tracers and to perform radioactive tracing associated with hydraulic fracturing. It appears that the Department transmitted this Request to its regional offices, each of which transmitted a response to the Requester. These responses were substantially the same but, because they were assigned separate Request Numbers by the Department, they will be appealed separately. This appeal relates only to the Department's Southwest Regional Office response, identified by the Southwest Office as No. 4500-16-018(SW).

DEPARTMENT RESPONSE TO REQUEST

The Department's Southwest Regional Office responded to the Request by denying the Request. In support of its denial, the Southwest Region identified that it withheld several thousand pages of responsive documents based on wide-ranging and ill-founded exemptions under the Right to Know Law ("RTKL"). At the conclusion of its Response, the Department

identified the Requester's right to file an appeal with the Office of Open Records and, that in such appeal, the Requester should identify the grounds for appeal.

Given the breadth of the Department's withholding of responsive records and the generality of the asserted exemptions, this Position Statement is intended to highlight the foundational implausibility of the Department's assertion of exemptions to withhold thousands of pages of responsive records. Each of the Department's claimed exemptions will be addressed in order.

Public Safety & Security

In its Response, the Department identified that 1,641 pages of records responsive to the Request were withheld based on the Department's contention that these records were exempt from disclosure pursuant to Section 708(b)(2) of the RTKL and Section 708(b)(3) of the RTKL, which the Department categorized under the heading "Public Safety and Security". The Department's claim that these records are exempt from disclosure under these sections of the RTKL and the rationale asserted by the Department in support of this is grossly deficient.

In order for an agency to properly assert an exemption under Section 708(b)(2) of the RTKL, the agency bears the burden to demonstrate that "the disclosure of the records would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity." Carey v. Pennsylvania Department of Corrections, 61 A.3d 367, 374 (Pa. Commw. Ct. 2013). Evaluation of the "reasonably likely" test involves analysis of "the likelihood that disclosure would cause the alleged harm, requiring more than speculation." Id. at 375. The Department's assertion of this exemption under Section 708(b)(2) is mere unfounded speculation, which is made readily apparent by both the content of the Department's Response

and the fact that other state and federal government agencies have published the same type of information on their websites that is nearly identical to what was sought in the instant Request and what is presumably being withheld by the Department.

With these “Public Safety and Security” exemptions, the Department engages in baseless fear-mongering to direct attention away from the deficiency of its Response. Amongst the doomsday scenarios presented by the Department in its Response are its contentions that:

- disclosure of licensure information could allow an individual to “utilize the information contained in the license and reports to unlawfully obtain the radioactive materials for illicit purposes thus creating a major security and health breach.” [Department Response at p. 4].
- “Disclosing the contents of these records would reveal specific information pertaining to the nature and location of radioactive materials.” [Department Response at p. 4].
- “Information contained within these files would give a determined adversary the means to actually do harm to others.” [Department Response at p. 4].

Essentially, the Department would have one believe that if it provided the records in its possession that are responsive to this Request, that cities across the Commonwealth would suddenly become black market weapons bazaars full of unsavory characters purchasing radioactive materials. These “scare tactics” are preposterous and are nothing more than ill-fated attempt to direct attention away from the fact the Department has not and cannot demonstrate, beyond mere conjecture, that it is reasonably likely that the disclosure of these records will jeopardize or threaten public safety, as is required by law. Carey, 61 A.3d at 374, 75. In fact, beyond using “buzzwords”, the Department’s Response does not even rise to mere speculation of potential harm to “Public Safety and Security.” A cursory examination of the Department’s assertion of this exemption, in concert with records that other regional offices of the Department

provided *and* general background information, reveals the absurdity of the Department's position that the "Public Safety and Security" exemption applies.

It is inconceivable that the Southwest Region office would attempt to claim such a public safety and security exemption for not disclosing where ProTechnics utilized radioactive tracers when such location has already been in the public domain. At a January 26, 2016 hearing before the Court of Common Pleas of Washington County regarding a Motion to Compel ProTechnics to produce documents responsive to a subpoena in the matter of *Stacey Haney, et al v. Range Resources-Appalachia, LLC, et al*, the President of ProTechnics testified in open court about the use of ProTechnics products at the Yeager Site. *See generally*, February 8, 2016 Hearing Transcript at attached hereto as **Attachment 1**. During that hearing, the President of ProTechnics also testified about how the "ZeroWash" tracer products work, which the Department cannot claim to be withheld due to concerns of public safety and security. *See*, Attachment 1 at pp. 27-31.

Further, the Department's misuse of the "Public Safety and Security" exemption to withhold responsive records from the Requester is the Department's decision not to disclose the address of ProTechnics. In its Response, the Department identifies that among the 1,544 pages of withheld records, there is information about ". . . physical addresses." [Response p. 4]. From a threshold perspective, it is unclear how the Department could conclude that disclosure of the business address of a company where correspondence is directed would endanger the "Public Safety and Security." ProTechnics' office is not a secret military facility where national security could be compromised by disclosure of its mailing address: it is an office building in suburban Houston. A visit to the ProTechnics website includes a page where one can obtain the address and telephone number for every ProTechnics location: (<http://www.corelab.com/>

ProTechnics/locations). A copy of this webpage is attached hereto as **Attachment 2**. In fact, on that website, ProTechnics lists its headquarters address and phone numbers and invites people to make contact with the company:



Contact ProTechnics

Email Us

[Send us a request](#)

Headquarters
6510 W. Sam Houston Pkwy. N.
Houston, TX 77041

Call Us
USA: 1-713-328-2320
Canada: 1-403-571-1685
International: 1-713-328-2323
Technical: 1-713-328-2340

Locations

See, Attachment 2. Presumably, if ProTechnics was concerned about the “Public Safety and Security” ramifications of the disclosure of its address, it would not maintain this information on its own website. Since ProTechnics has disclosed its headquarters address and its other numerous business locations on its own website, the unidentified “determined adversary” that the Department cites in its Response would not have to work too hard to acquire this information. In light of these facts, the Department’s withholding of documents with ProTechnics’ name and address on them is not justified by its asserted “Public Safety and Security” exemption claims.

The Department’s refusal to provide records containing ProTechnics’ mailing address is but the tip of the iceberg in the Department’s puzzling and improper redaction of records and withholding of records based on its “Public Safety and Security” exemption. If one reasonably

interprets the Department's Response, one reaches the conclusion that the Department will neither confirm nor deny that ProTechnics has a radioactive materials license in the Commonwealth, as the Department asserts that it withheld records that include "... licensees' names, license numbers. . ." [Response at p. 4]. The records that other regional offices of the Department did produce, however, clearly indicate that ProTechnics had or has a radioactive materials license that the Department either by way of a general license, a reciprocal license or a Pennsylvania radioactive materials license. This is exemplified in the June 15, 2010 "Notice of Violation" directed to ProTechnics and regarding "License No. REDACTED." Obviously, ProTechnics had a radioactive materials license number, or there would be nothing to redact in this line. This is confirmed in the Consent Order and Agreement of November 2, 2010 that other regional offices of the Department provided wherein it states, at Item K, that ProTechnics obtained radioactive materials license on February 26, 2010. *See*, November 2, 2010 Consent Order and Agreement attached hereto as **Attachment 3**. Quite clearly, the Department's resistance to any disclosure of information relative to ProTechnics is undermined by the records that were already produced by its other branches.

Related to ProTechnics' licensure, the Department failed to produce documents regarding ProTechnics' Texas radioactive materials license. Much like the Department's refusal to disclose ProTechnics' business address, the Department's failure to disclose ProTechnics' Texas radioactive materials license number is without merit or basis under a "Public Safety and Security" exemption. Information regarding the Texas Department of State Health Services' radioactive materials licensure is available online, which sets forth license numbers, license type, license status, license expiry, general details regarding the particular license, specifically what radioactive materials and in what quantity these radioactive materials may be used and for what

purpose, as well as the company address and company phone number. An exemplar copy of such information, as well as an incident summary report are collectively appended hereto as **Attachment 4**. Again, the Department's claim that it cannot disclose such information because of threats to "Public Safety and Security" is contradicted by the fact that this information is already in the public domain and, in fact, placed on the internet by a sister state from which the Department granted ProTechnics a reciprocity license to use radioactive material in Pennsylvania.

Among the information that the Department has withheld is information regarding locations where ProTechnics products were used. The Department's claim that disclosure of this information would jeopardize "Public Safety and Security" is wholly undermined by the records that other regional offices of the Department produced. In the records that other regional offices of the Department produced, the Department produced the the names of landfills where these ProTechnics radioactive tracers that flowed-back from the well were taken for disposal. Reason would dictate that *if* the Department was concerned that its disclosure of locations where ProTechnics products were injected into the ground could "give a determined adversary the means to actually do harm to others", the Department would more vigorously guard the location of the landfill where the recovered radioactive flowback was disposed-of and no regional office of the Department would produce such information.¹ As discussed below, the federal Nuclear Regulatory Commission makes this information available on its own website, further undermining the Department's position. Further, it is odd for the Southwest regional office to refuse to produce any records regarding ProTechnics when other regional offices of the

¹ To this end, it seems implausible for the Department to contend that, with respect to the matters referenced in its Notices of Violation, that disclosure of the locations where Protechnics tracers were used several years ago jeopardizes any public safety.

Department produced records disclosing the names of the companies whom disposed of these tracers. For example, the Southcentral regional office disclosed a Notice of Violation directed to Citrus Energy Corporation. *See*, Notice of Violation directed to Citrus Energy attached hereto as **Attachment 5**.

Along similar lines, the Department's contention that revealing "inspection reports" and "documentation of security controls" would undermine the "Public Safety and Welfare" is frustrated by other information that other regional offices of the Department have provided. For example, the Department's Northwest Regional Office provided the minutes of a June 16, 2010 Program Managers' Conference Call in response to the Request. *See*, June 16, 2010 Program Managers' Conference Call minutes attached hereto as **Attachment 6**. This document identifies that the Rustick Landfill had a radiation alert for Iridium-192, in waste generated from a gas well where ProTechnics utilized Iridium-192 tracer beads. The letter then continues that "ProTechnics is currently the only company utilizing this technology in PA." Quite clearly, information about "security controls" and the results of incidents have been provided by the Department. In light of this, the Department cannot credibly refuse to produce documents responsive to the Request by asserting an exemption that the Department itself has already ignored.

Also unclear is how the Department refused to provide any information regarding the names of individuals employed by or representing ProTechnics is an appropriate "Public Safety and Security" exemption under the RTKL. For example, in the records that other regional offices of the Department produced, it partially identifies the employee at ProTechnics that correspondence was directed to. There is absolutely no reason why the Southwestern office should not have provided the same information already provided by other regional offices of the

Department.² Moreover, the Department's refusal to disclose documents identifying any individuals at Protechnics is contrary to the information provided by the other regional offices. For example, documents have been produced by other Departmental regional offices identifying Protechnics employees "Mr. Hampton" and "Mr. Flecker." *See*, January 28, 2010 Notice of Violation transmitted to "Mr. Hampton" and December 23, 2013 correspondence to "Mr. Flecker," appended hereto as **Attachment 7**. Additionally, other regional offices of the Department have produced documents identifying the names and addresses of other parties involved in matters subject to the Request, such as the August 3, 2010 Consent Assessment of Civil Penalty involving Elk Waste Services, Inc. of 134 Sara Road, Saint Marys, PA 15857, which was signed by Chester L. Cheatle, the President of Elk Waste Services. *See*, August 3, 2010 Consent Assessment of Civil Penalty attached hereto as **Attachment 8**. Other regional offices of the Department even produced a check from Elk Waste Services bearing the company's bank account number. *See*, Attachment 8. There can be no doubt that the Department's non-disclosure of even basic information is arbitrary.

While these examples indicate that the Department's withholding of responsive records based on "Public Safety and Security" are nonsensical, a more global view of the Department's "Public Safety and Security" exemption claim reveals that its fundamental premise is fatally flawed. At the heart of the Department's "Public Safety and Security" claim is that disclosure of information related to radioactive licenses, complaints and violations would somehow jeopardize the public welfare. This contradicts the practice of the United States Nuclear Regulatory Commission ("NRC"), the federal agency entrusted with nuclear regulation and safety. Whereas

² Moreover, documents available on the Nuclear Regulatory Commission website contain the names of ProTechnics employees. *See*, Nuclear Regulatory Commission website documents, appended hereto as **Attachment 9**. If the Nuclear Regulatory Commission does not find it to be contrary to the public safety or, indeed, individuals' personal safety to place this information on its website, the Department cannot credibly assert such exemption.

information such as radioactivity license numbers, corporate addresses, types of radioactive sources, locations of use, etc. are guarded by the Department for fear of falling into the hands of unidentified miscreants, the NRC makes all of this information available on its website. *See*, Attachment 9. Also puzzling is that the Department's Northwest regional office produced, in response to the Request, an internal e-mail, dated November 16, 2010, wherein Department employees noted concerns of radiation exposure to Department inspectors associated with the use of radioactive tracers. *See*, November 16, 2010 Department e-mail attached hereto as **Attachment 10**.

On the front page of the NRC website, there is a "Search" feature where, if one enters "ProTechnics", five (5) pages of results are populated, with hyperlinks to a variety of documents. Searching through these free, publicly available files on the NRC website reveals a plethora of information about ProTechnics. For example, one entry on the NRC website involved an April 2014 event in Colorado involving ProTechnics:

Agreement State	Event Number: 50065
Rep Org: COLORADO DEPT OF HEALTH Licensee: PROTECHNICS Region: 4 City: FRUITA State: CO County: License #: CO 545-01 Agreement: Y Docket: NRC Notified By: JAMES JARVIS HQ OPS Officer: DONALD NORWOOD	Notification Date: 04/28/2014 Notification Time: 16:15 [ET] Event Date: 04/04/2014 Event Time: 14:30 [MDT] Last Update Date: 04/28/2014
Emergency Class: NON EMERGENCY 10 CFR Section: AGREEMENT STATE	Person (Organization): MARK HAIRE (R4DO) FSME EVENTS RESOURCE (EMAI)

Event Text

AGREEMENT STATE REPORT - SCRAP FACILITY GATE ALARM

"On 04/04/14 at approximately 1430 MDT, the Colorado Radiation Program received phone notification of a scrap load that had been rejected at a recycling facility in Englewood, CO due to a

gate radiation alarm. Scrap facility personnel performed surveys around the container using hand held survey instruments. Surveys indicated readings up to a maximum of 120 microrem/hour (Ludlum Model 3). Recycling facility staff indicated that the load would not be returned to the shipper until the following week and that the load/roll-off container was segregated onsite. The Colorado Radiation Program issued a DOT special permit and the scrap metal was returned to the originator, Baker-Hughes (Colorado License No. 678-01; 285 County Road 27, Brighton, CO 80603) on or about 04/11/14.

"Preliminary communications with Baker-Hughes personnel indicated that it performed well fracking work in mid-March 2014 and worked with another Colorado licensee - well logging tracer company, ProTechnics (Colorado License No. 545-01; 703 Greenway Drive, Fruita, CO 81521). Baker-Hughes is not authorized for tracer material use. Baker-Hughes requested that ProTechnics perform surveys on the rejected scrap load to determine whether the contamination was naturally occurring radioactive material, or tracer material. ProTechnics performed radiological surveys on or about 04/15/14 at the Baker-Hughes facility and determined that a small amount of tracer material remained in one component (a manifold removed from the pumping truck) of the scrap load. ProTechnics identified the tracer material as Iridium-192. The tracer material combined with approximately 10 lbs. of fracking sand was removed/decontaminated from the scrap component and was packaged by ProTechnics and returned to their facility in Fruita, CO for decay in storage. ProTechnics estimated the activity of Ir-192 tracer material in the component to be approximately 0.015 mCi. After receiving a preliminary written report from ProTechnics on 04/16/14, Colorado Radiation Program staff performed phone interviews of Baker-Hughes personnel and ProTechnics personnel.

"Colorado Radiation Program staff performed on-site verification surveys of the scrap load (post-decontamination) on 04/21/14. Surveys indicated that no radiation levels above instrument background were detected on the remaining decontaminated scrap.

"The Colorado Radiation Program is continuing to investigate the incident to determine further actions."

Readily apparent is the ProTechnics Colorado radioactive materials licensure number, the exact time and date of the incident, the type of incident, and the specific radiation source, an IR-192 tracer as well as the names of individuals reporting the incident. There are many other entries on the NRC website with similar specificity as to the identity of where, what and how specific radioactive tracers were used and mishandled. *See*, Attachment 9.

When one examines the information that the NRC makes available on its own website, it is readily apparent that the scope of the Request is fairly encompassed within these documents. The Department cannot credibly claim that it withholds information for "Public Safety and Security" reasons when its federal counterpart makes this same information available, without even any need for a Freedom of Information Act inquiry. In the Department's case, it is difficult

to imagine what risk to the public wellbeing would arise by the disclosure of information about where decaying radioactive tracers were injected into gas wells.

Moreover, substantial information about how ProTechnics' products work is available on the United States Patent and Trademark Office Website and surely, for that reason, cannot justify the Department's assertion of the public safety and security exemption. A search for Patent Number 5,182,051 reveals a patent for "Radioactive tracing with particles" that is held by ProTechnics. A copy of this patent document is attached hereto as **Attachment 11**. Again, as referenced above, the President of ProTechnics testified in open court, on direct examination, in great detail regarding how the "ZeroWash" radioactive tracer works. *See*, Attachment 1.

Along similar lines, ProTechnics' ZeroWash Tracer, which was used at the Yeager drill site in Amwell Township³, was the subject of a 2013 article in the Journal of Chemical and Pharmaceutical Research, entitled "Study and application of ZeroWash tracer fracture monitoring." A copy of this article is attached as **Attachment 12**. In this article, the authors discuss the ZeroWash tracer and how it is used in the hydraulic fracturing process. Similar to information contained in patent documents, the Department cannot demonstrate that the disclosure of the withheld records would negatively impact the public safety and security because it includes information already in the public realm.

Simply put, the Department withheld 1,641 pages of records based on "Public Safety and Security" exemptions and redacted information in other records based on these same exemptions that are inappropriate under the RTKL.

³ Attached hereto is a copy of a nonprivileged document produced in related litigation demonstrating Protechnics' use of ZeroWash tracers at the Yeager well site and the quantities in which they were utilized.

Internal Predecisional Deliberation Exemption

The Department next asserts that of the 1,641 pages of records it is withholding, thirty-five (35) pages are exempted based on the “Internal, Predecisional Deliberation Exception” found in Section 708(b)(1)(i)(A) of the RTKL. To satisfy the Predecisional Deliberation exemption, the Department must demonstrate that the withheld records are “(1) internal; (2) prior to agency decision or course of action; and (3) deliberative in character.” Worcester v. Office of Open Records, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). Factual information is not deliberative in character. Id. Only the information “that constitutes confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice is protected as deliberative.” Pennsylvania Department of Education v. Bagwell, 114 A.3d 1113, 1122-23 (Pa. Commw. Ct. 2015) (internal citations omitted). Further, “each of the three elements must be established by the underlying facts, as the absence of any of the elements precludes protection under the exception.” Id. at 1123.

Whereas the Department contends that thirty-five (35) responsive records are being withheld as a result of this exemption, review of records produced by other Department offices reveals that this asserted exemption is without merit or basis. For example, the Department’s Northwest region produced a November 16, 2010 internal e-mail communication among Department employees *and* the meeting minutes of a June 16, 2010 Department meeting as well as the internal e-mail of the Department’s Northwest regional office expressing concern over oil and gas inspectors’ radiation exposure at these well sites. *See*, Attachments 6 and 10. It simply makes no sense for one office of the Department to claim an exemption on this basis and for another office of the Department to provide records.

Regulatory Preclusion

The third basis for exemption of records set forth by the Department is founded upon its contention that it has a “regulatory inability to release inspection reports by the Department’s radiation protection program and records for the radioactive materials general license registration,” resulting in the Department withholding 1,240 pages of responsive records. The Department appears to rely on 25 Pa. Code § 215.14(2) which provides:

§ 215.14. Availability of records for public inspection.

The following Department records are not available for public inspection, unless the Department determines that disclosure is in the public interest and is necessary for the Department to carry out its duties under the act:

- (1) Trade secrets or secret industrial processes customarily held in confidence.
- (2) A report of investigation, not pertaining to safety and health in industrial plants, which would disclose the institution, progress or results of an investigation undertaken by the Department.
- (3) Personnel, medical and similar files, the disclosure of which would operate to the prejudice or impairment of a person’s reputation or personal safety.

These claimed bases for withholding records are repeated by the Department elsewhere in its denial of the Request and are addressed more comprehensively in the relevant sections of this Position Statement related to those specific assertions. However, generally, the Department’s assertion that, under the law, substantial information is not subject to public disclosure based on these factors misses the mark and is not in-line with the nature and context of the Request.

Noncriminal Investigation

The Department next contends that forty (40) pages of responsive records have been withheld as a result of a noncriminal investigation. Hallmarks of a noncriminal investigation involve a “systematic or searching inquiry” and a “detailed examination.” Department of Environmental Protection v. Delaware Riverkeeper Network, 113 A.3d 869, 875 (Pa. Commw. Ct. 2015). While the Department recites provisions of the Radiation Protection Act at-length in its Response to the Request, the Department does not and cannot demonstrate how the requested records constitute a “systematic or searching inquiry.” Instead of a systematic and detailed examination, it appears that, from the Department’s description, the its interaction with ProTechnics with regard to this matter involved mere issuance of violations for actions contrary to Pennsylvania law. To accept this explanation would serve to cause an incredible percentage of records maintained by the Department to be shielded from public view. Moreover, while the Department contends that “these records prompted the [Central Office] to conduct an official probe at the facility . . .” the Department does not identify what this “facility” is.

DEEMED DENIAL

Beyond the content of the Department’s March 9, 2016 correspondence, the Request, with respect to the Southwest Region, must be considered as a “deemed denial” for the Department’s failure to respond to the Request within the requisite timeframe. As noted on Page 2 of the Southwest Region’s Response, the Response was due on March 9, 2016. However, review of the Department’s envelope enclosing this Response plainly indicates that it was postmarked by the Department’s own mailing device, on March 10, 2016. *See*, copy of Envelope enclosing Southwest Region Response, appended hereto as **Attachment 13**. As a result, the Department’s Response was not timely transmitted to the Requester and must be viewed by the

Office of Open Records as a "deemed denial." Clearly, the Department's Southwest Region possesses records that are responsive to the Request and, accordingly, its denial is without basis.

In light of the foregoing, Requestor challenges the final determination of the Department's Southwest Regional Office's final determination dated March 9, 2016 and transmitted on March 10, 2016.

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IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY
PENNSYLVANIA
CIVIL DIVISION

STACEY HANEY, et al.,)
Plaintiffs,)
vs.) No. 2012-3534
RANGE RESOURCES -)
APPALACHIA, LLC, et al.,)
Defendants.)

EVIDENTIARY HEARING ON THE MOTION
TO COMPEL, IN THE ABOVE-ENTITLED
CAUSE, BEFORE THE HONORABLE
WILLIAM R. NALITZ, SENIOR JUDGE,
HELD ON JANUARY 26, 2016, IN
COURTROOM NO. 6

APPEARANCES:

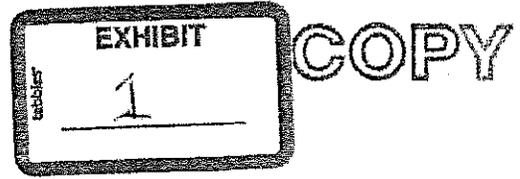
Kendra L. Smith, Esquire
John M. Smith, Esquire
Representing the Plaintiffs

Roy W. Arnold, Esquire
Representing Third Party
Core Laboratories/ProTechnics

TRANSCRIPT OF PROCEEDINGS

Transcribed by:
Resa Hall
Court Reporter

Transcript filed in the
Office of the Prothonotary
this 8th day of February, 2016



I N D E X

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Plaintiffs' Exhibits:	Marked	Admitted
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P R O C E E D I N G S

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THE COURT: Okay. This is the time for a hearing in the matter of third-party discovery directed to ProTechnics in the matter of Haney vs. Range Resources, No. 3534 of 2012.

On December 17th, we issued an order refusing some of Plaintiffs' motion to compel and scheduling the remainder for a hearing, which is scheduled for today.

Are the parties ready to proceed?

MR. ARNOLD: Yes.

MS. SMITH: Yes, Your Honor.

THE COURT: Mr. Smith, Ms. Smith, I guess one of you should go first.

MS. SMITH: Your Honor, the hearing was requested, as you may recall, by counsel for ProTechnics. If you want me to go first, I'm happy to do that, but it --

THE COURT: Okay. Well, yeah, I guess --

MR. ARNOLD: Your Honor, I'm happy to proceed however Your Honor would like, and we're fine going first.

Brief remarks to open, and, then, Your Honor, we were going to call Mr. Michael J. Flecker to

1 testify.

2 THE COURT: Okay.

3 MR. ARNOLD: Your Honor, obviously, we
4 received Your Honor's order of December 17th. Since
5 that time -- and I think Plaintiffs would
6 acknowledge -- we did supplement the production with a
7 couple of additional invoices that we were able to
8 locate. We produced those to Plaintiffs.

9 We also produced a product description
10 relating to the isotope tracers. That product
11 description, also, is a -- it's a one-pager, and it
12 lists information including -- for each of the isotopes
13 that was identified in the jobsite survey, it
14 identifies the radionuclide, chemical form, SG, mesh
15 size, and half-life days. So it provided Plaintiffs
16 with some additional information relating to those
17 isotope tracers.

18 We think, Your Honor, in terms of what's at
19 issue today, per Your Honor's order, is paragraph 7C of
20 Plaintiffs' motion to compel, which is specifically
21 relating to the gas chromatography, mass spectrometry,
22 and ion chromatography data. That's the underlying
23 data that underlies the test results that were actually
24 provided to Plaintiffs in the initial flowback report
25 that was produced very early on in this process.

1 And, again, to the extent invoices Your Honor
2 has ordered, and it is specifically mentioned in
3 paragraph E, but we made sure that the invoices were
4 all provided to Plaintiffs.

5 The other items that are open, paragraph F
6 relates to contracts/subcontracts performed by
7 ProTechnics on behalf of Range and/or United Well
8 Services. Paragraph G, radioactive material
9 description. H, surveys. And L, any correspondence
10 with Range.

11 Again, we previously explained we did provide
12 the surveys. I'm going to have Mr. Flecker cover that,
13 as with each of these items. And we previously
14 produced correspondence with Range. There's not a lot
15 of correspondence, but Mr. Flecker is going to address
16 that as well.

17 So with that brief introduction, Your Honor,
18 I'll call Mr. Michael J. Flecker to the witness stand.

19 THE COURT: Mr. Flecker.

20 - - - - -

21 M I C H A E L J. F L E C K E R,

22 was called as a witness, and after having been
23 first duly sworn, testified as follows:

24 - - - - -

25

D I R E C T E X A M I N A T I O N

1
2 BY MR. ARNOLD:

3 Q. Good afternoon, Mr. Flecker, would you please
4 introduce yourself to the Court?

5 A. I am Mike Flecker.

6 Q. And where do you live?

7 A. I live in Sugar Land, Texas. Just outside of
8 Houston.

9 Q. Okay. Did you travel here today from Houston
10 to testify?

11 A. Yes, I did.

12 Q. Okay. And who's your current employer?

13 A. Core Laboratories. ProTechnics Division of
14 Core Laboratories, to be specific.

15 Q. Okay. And what's your current position with
16 ProTechnics or Core Laboratories?

17 A. I'm the president over the ProTechnics
18 Division and over the Stim-Lab Division.

19 THE COURT: I'm sorry, did you say stem?

20 THE WITNESS: Stim, S-T-I-M, dash, L-A-B.

21 THE COURT: Okay.

22 BY MR. ARNOLD:

23 Q. In your role as president of the ProTechnics
24 Division, what are your responsibilities?

25 A. It's everything from financial to sales and

1 marketing to global operations, technology development.

2 Q. And how long have you been in the oil and gas
3 industry?

4 A. Thirty-five-plus years.

5 Q. And how long have you been employed by
6 ProTechnics or Core Labs?

7 A. It will be 16 years in February.

8 Q. What type of work does ProTechnics specialize
9 in?

10 A. Completion diagnostics is what we claim is
11 our main -- that's our main market. Reservoir
12 diagnostics is another area. There's a few other
13 smaller areas. But, predominantly, completion
14 diagnostics.

15 Q. And with respect to the Yeager well,
16 specifically, and the job, what does ProTechnics
17 provide in that field?

18 A. In that particular area, that falls in our
19 completion diagnostics arena. And in that case, we
20 provided tracer services, where we would go out to
21 location and inject tracers into the stream. It's like
22 a taggant.

23 As they're pumping the frac job, we're just
24 marking the fluid and the proppant that goes downhole
25 so that we can understand how each stage was treated

1 and how it performs when it comes back on production.

2 Q. Okay. And what is the relationship between
3 ProTechnics and Range Resources?

4 A. We're a service provider to Range contracted
5 on a per-well basis.

6 Q. Okay. And are you aware that Plaintiff
7 served a third-party subpoena on ProTechnics in this
8 case?

9 A. Yes.

10 Q. And were you involved in collecting documents
11 in order to respond to the subpoena?

12 A. Yes.

13 Q. And did you assist counsel in preparing
14 ProTechnics' response to the subpoena that Plaintiff
15 served?

16 A. Yes.

17 Q. Okay. Now, without revealing any
18 confidential or proprietary trade secret information,
19 can you tell the Judge -- what can you tell the Judge
20 about the nature of the ProTechnics chemical tracers?

21 A. Okay. Our chemical tracers are -- you know,
22 we pump them at less than one part per million. Each
23 individual tracer is kind of unique. It's not
24 naturally occurring in the reservoir so that we can
25 clearly identify each zone without it being interfered

1 with by naturally occurring chemicals.

2 Our chemicals are -- I guess, there's certain
3 criteria that have to be had, such as it being unique.
4 But before we start testing the chemicals to see if
5 they'll work as a tracer, we actually first look at
6 HSE -- health, safety, environment.

7 We look at the EPA and other agencies, like
8 in Canada and Europe, and validate that they're not
9 listed on any known carcinogens or bioaccumulation
10 toxins. So that's the easy one. That's the first
11 criteria.

12 Then we go and we look at, does it qualify?
13 Will it handle the temperature and pressure? Will it
14 be stable? Not degrade. Not be eaten by bugs. Many
15 different other criteria.

16 Most of the effort to determine what chemical
17 can be used for a tracer or a taggant is proprietary.
18 Part of the reason why we protect this is we don't want
19 to give out that recipe to our potential competitors.

20 Q. Okay. And did you say that -- what type
21 of -- are they sodium salts?

22 A. They are sodium salts.

23 Q. And in the particular instance of the tracers
24 used on this site, they were sodium salts?

25 A. Correct.

1 Q. Okay. But there are unique aspects to it
2 that you can't --

3 A. Correct.

4 Q. -- or you protect in order to protect the
5 value of those tracers to your business?

6 A. Correct. That is our core business. The
7 tracers. All of our employees, everybody that works
8 for us is -- the jobs, everything we do, is strictly
9 based on this tracer technology.

10 Q. And if I understood your testimony right, you
11 start as a threshold matter in deciding what types of
12 salts -- sodium salts to use, the threshold there is
13 that they're not listed on any kind of environmental
14 watch list or hazardous material list?

15 A. Correct.

16 Q. Now, have you had a chance to look at the
17 flowback report --

18 A. I have.

19 Q. -- that was produced in this case?

20 A. Yes.

21 Q. Okay. Can you describe, generally, what is
22 contained in a flowback report and the nature of what
23 type of results are in this report?

24 A. Okay. Well, to put around some context, we
25 pump a unique tracer with each frac stage. So a well

1 might have ten stages.

2 MR. SMITH: Just for clarification,
3 Mr. Arnold, are we speaking about this document or just
4 in general?

5 THE WITNESS: This document.

6 MR. ARNOLD: This document.

7 MR. SMITH: Okay. Thank you.

8 THE WITNESS: So in this case, I can't
9 remember how many stages were in that well. Let's say
10 it was ten stages. They will perforate the wellbore to
11 have fluid access to that, and they will hydraulically
12 fracture an interval of the zone. And we place a
13 tracer in there with that fluid to make sure that we
14 understand how that fluid behaves.

15 Once it goes on production, they'll
16 perforate -- they'll set a plug, isolate that zone,
17 perforate, and frac the next zone. So a unique fluid
18 system goes in there. We'll mark it. And we do that
19 until we get done with the well completion.

20 When the well is put back on production, we
21 collect water samples at surface, and from that water,
22 we can identify what tracers are in the water. And
23 let's just say the bottom three zones were plugged or
24 blocked and not working. The plumbing is messed up.
25 We take a water sample, and we see we have seven

1 tracers in the water, but these bottom three tracers
2 aren't showing up.

3 So that's a simple application here of should
4 I go in with coil tubing, clean out the well. It might
5 have been filled with sand. Clean it out so we can get
6 all those zones producing.

7 So that's a simple -- it's about as simple as
8 that. That's the simplest way to determine what we do
9 with that report.

10 There's other information and other
11 applications. It can get complex, what we do, but
12 that's the simple way to describe it.

13 Q. Okay. And when you're talking about those
14 stages, those are the chemical tracers that are going
15 into each stage; is that right?

16 A. Right. We're marking the frac fluid that
17 carry the proppant down there.

18 Q. Okay. And the proppant, there are proppant
19 tracers, too? Those are the isotope tracers that we
20 talked about?

21 A. That's correct.

22 Q. Okay. Now, the report that was produced --
23 the flowback report -- explain that the samples were
24 analyzed with gas chromatography, mass spectrometry,
25 and ion chromatography.

1 A. Correct.

2 Q. Can you -- were the results of those tests
3 contained in the flowback report that was produced?

4 A. They are.

5 Q. Okay. What about the underlying data that
6 was used to produce the report?

7 A. The underlying data is raw data, area counts,
8 that have to be calibrated and converted to get these
9 engineering results that you can interpret.

10 The raw data, as you know, we made an
11 attempt -- or -- multiple attempts to try to retrieve
12 that data. Unsuccessfully. I can describe more.

13 Q. Sure. Why don't you tell the Judge about
14 what you did as president of ProTechnics to try and
15 obtain the raw data for the Plaintiffs in this
16 situation?

17 A. Yeah. We have a chemistry lab manager who
18 manages all of our processes with regard to analyzing
19 these samples. I went to our lab manager and asked him
20 to produce the -- I said we had a subpoena. I gave him
21 the well name. Told him I need to get the raw data for
22 this job.

23 He went and searched the database, tried to
24 see if he could find the raw data.

25 We do not have the ability to locate that

1 data through our database.

2 Q. And is that because this job was done back in
3 2009? December of 2009?

4 A. Correct. Back at that time, you know, our
5 raw data is not something that we leverage. It's
6 the -- the interpretation is based off of the report
7 that we provided. That's what we provide our client.
8 That's what our engineers use.

9 Once we calibrated and moved to that phase,
10 that's what you use. That's the -- what has value.
11 And so we've never worried about the raw data once we
12 get it converted.

13 Q. Now, in this flowback report, there's a
14 paragraph that describes essentially what you described
15 about using the tracers and injecting them into the
16 frac stages. And eight frac stages, it says.

17 But there's a summary here. And it says, "As
18 the sample period proceeds with time, the chloride
19 concentrations are observed to increase, while the
20 total chemical tracer concentrations are observed to
21 decline. This trend suggests that the formation brine
22 component of the flowback fluid is increasing as the
23 chemically traced treatment fluid component declines."

24 Can you explain what that means, and why that
25 is important in the context of this report?

1 A. Yeah. That's another application of the
2 diagnostic. We used to only measure the chemical
3 concentration, and over time you can see the chemical
4 concentration dropping off. That's just historically
5 true.

6 And sometimes people wonder is that really
7 accurate. Is that what's going on with my well,
8 because it didn't -- and so we started taking the
9 cation measurements to which that just is taking the
10 measurements of the water itself. Not our tracers. An
11 independent measurement. Because the water that we
12 pump downhole is more fresh water. And the formation
13 water is more like sea water. It's a high salinity.

14 So when you see the cations, which is the
15 salts that are in the fresh water going downhole. When
16 you start producing the well back, the first fluid you
17 produce back is going to be more the frac fluid. So
18 it's going to be more fresh water.

19 And over time, as the zone cleans up and the
20 frac fluid cleans up and gets out of the way, the
21 formation water starts coming in and almost washing it
22 out, which cleans up the frac and it flows better then.

23 The original purpose of pumping tracers, and
24 the patent that we had was because when they were
25 pumping frac fluids, they would use a gel. Like, a gel

1 stabilizer. Because they want to carry sand and
2 proppant and get it out thousands of feet away. The
3 gel would be like glue, and it would -- yeah, you might
4 create a fracture and proppant, but if the glue doesn't
5 break and clean up, it's just a plugged fracture.

6 So the purpose -- original purpose of the
7 tracers was to mark the different stages of fluid and
8 determine if it cleaning up. And early on we had a lot
9 of glue. And so they changed the fluid systems, and
10 they've improved them to try to get them to clean up.

11 So this is doing two things. We're showing
12 the chemicals are coming back, but the fact that we
13 have the salinities coming up is showing that the
14 formation fluids are coming in. And those formation
15 fluids are just cleansing out the frac fluid. And the
16 well is going to be producing better once you get the
17 frac fluid off.

18 We say in our world that the frac fluid is
19 damaging and that it's plugging the production. So
20 it's, like, a plumbing issue. How can I get that
21 cleaned out? And that's the number one purpose of the
22 tracers, is to make sure our fluid systems are
23 effective at cleaning up and creating an effective
24 fracture. Conductive fracture.

25 Q. Okay. Can you describe to the Judge how the

1 water samples are taken at the well and sent to
2 ProTechnics?

3 A. We -- when our employees go out to location
4 to pump the tracers, we leave a kit on location. That
5 will be boxes with bottles with labels on them with
6 FedEx shipping. The box is labeled with our name.
7 Everything is set up.

8 We hand that off to -- typically, the client
9 will have a flowback crew on location. I'm not exactly
10 certain all that they do. But right after the frac,
11 the client will have somebody out there monitoring
12 flowback and determining how much of the frac fluid has
13 been recovered and taking their measurements.

14 They'll take these samples in a small, like,
15 125-millimeter-size Nalgene bottle. Label it. Send it
16 into Houston. And these are coming in from all over
17 the world. Our one location.

18 Those samples are then taken through a
19 process -- proprietary process that we have to analyze
20 for our tracers.

21 So they might collect several samples on the
22 first day, and then the next day, less. And as time
23 goes by, they'll collect fewer samples.

24 Q. Did ProTechnics keep those bottles -- water
25 bottles of samples for six years or more?

1 A. No. Our normal practice is that we will take
2 those samples, we'll analyze them. Because we don't
3 need the whole 125-mils of fluid to analyze it. We can
4 analyze that thing a hundred times, probably, with that
5 amount of fluid.

6 What we do is, we'll hold those samples in
7 storage, and then when the new samples come in from
8 around the world, we'll put those in storage.

9 So it's kind of like first-in, first-out. We
10 just shift the old samples and properly dispose of
11 those. Bring in new samples. So there's a cycle.

12 And so the amount of time they stay there
13 might be a month, might be two months. Depends on the
14 rate of samples coming in. We don't offer that as a
15 service. It's not -- we just do it as a matter of,
16 well, hang on to them just in case somebody says, hey,
17 let's go back and reanalyze the sample or something.

18 Q. Now, I heard you testify earlier about the
19 underlying data not being identifiable or retrievable.

20 A. Correct.

21 Q. Let's assume, hypothetically, that you, in
22 fact, could retrieve the information. If the data was
23 retrievable, would it be usable? And I'm talking about
24 the gas chromatography, mass spectrometry, or ion
25 chromatography. Would that data be usable to the

1 Plaintiffs in its raw form?

2 A. I don't know how.

3 Q. Can you explain?

4 A. Well, the chromatography data is measured in
5 area, and it's a number. It's not -- it's not -- it's
6 almost unitless. And until you can calibrate and
7 convert it into parts per billion or parts per million,
8 you know, concentration. Because you cannot get
9 concentration from the raw data. The raw data would
10 have to be calibrated and converted into. Which is --
11 what we provided was the calibrated results that are
12 interpretable.

13 And that's what our engineers use to help our
14 clients figure out how better to produce the wells, is
15 the report that we provided.

16 Q. If Range Resources, back in November, had
17 made the same request by Plaintiffs -- or in December
18 or today -- if Range Resources made the same request
19 for this underlying raw data, would you be able to --
20 would the answer be any different in terms of your --

21 A. No. No.

22 Q. Can you tell the Court some of the things
23 that have affected, as you understand it, ProTechnics'
24 ability to try and identify or locate the underlying
25 raw data?

1 A. Well, we have gone through personnel changes,
2 system changes, new database changes. Currently,
3 today, we actually do have the ability, with our
4 current database, to go in and say, hey, this sample,
5 here's the raw data, and it's linked. Part of that is
6 because if a manager wanted to go review somebody's
7 performance, he could go and quickly look at it. We
8 didn't have that ability back at that time.

9 The other thing is, we have multiple
10 instruments running 24/7 with samples coming in from
11 all over the world. The samples being analyzed are
12 intermingled with other projects.

13 They are intermingled -- they might --
14 this -- like, if we look at the samples on this list,
15 one of them might have been run on this day on that
16 instrument. This sample which came in seven days later
17 might have been analyzed on that instrument. There's
18 no -- it's a -- so we got multiple instruments,
19 different PCs.

20 There are other complications. I think --
21 and the PCs back then, we couldn't have them on the
22 network due to security issues of XP or some IT issue.
23 They wouldn't let it be on the Internet because that
24 version of operating system was not being supported by
25 Microsoft. It wasn't secure. I don't know. There's

1 some other -- I don't understand the technical side of
2 why we can't get the data.

3 Q. Okay. Now, the underlying raw data, is that
4 still something -- is that something you consider
5 confidential and proprietary? Do you give it to
6 clients?

7 A. Yeah, that would also -- in order to be able
8 to use that data, and if you look at the raw data, it's
9 going to pretty much identify what our tracers are.

10 With that being said, that's a trade secret,
11 and that's our company. That trade secret is
12 foundational. If there's anything we have to keep
13 trade secret, that is it. So that's the number one
14 biggest concern, is we did -- cannot reveal the tracer.
15 It would -- we might be able to redact things from it
16 to eliminate that issue.

17 The other one is, if you have to figure out
18 how to use that data, and if it's useable, you have to
19 be able to calibrate it, and you have to understand how
20 we perform our process. And the process, even, to
21 analyze our data is unique to our company. No one
22 outside our company knows what we're doing or how we do
23 it.

24 So it would reveal two things. Our process
25 is proprietary, and more importantly, the tracer. And

1 the tracers are, again, low concentration, to mark the
2 fluids or the massive fluids going down are the --
3 what's really being pumped downhole. We just have a
4 small marker, similar to what people do to mark
5 gasoline or drugs or dollar bills for
6 anticounterfeiting. That's kind of what we're doing.
7 And that is confidential.

8 Q. Now, so the process and the tracer
9 composition, those are both -- they're not disclosed
10 publicly?

11 A. Correct.

12 Q. And ProTechnics undertakes measures to
13 protect those -- both the process and the tracer
14 composition -- from outside knowledge?

15 A. We protect it even on the inside. There's
16 very few people who are allowed to know.

17 Q. Does the process and the tracer composition,
18 do those provide economic value to ProTechnics?

19 A. That's our whole -- that's it. That's our
20 core of how we make our money.

21 Q. Do you know if there are competitors out
22 there who would like to get access to that information?

23 A. We do know.

24 Q. Have you had situations where competitors
25 have tried to steal your information?

1 A. We're in a lawsuit right now due to some
2 ex-employees who have stolen --

3 Q. So you know competitors are out there?

4 A. I have maybe alleged -- yeah, that's what
5 we're alleging, and that's what we're dealing with
6 right now.

7 Q. Okay. And you know that there are
8 competitors out there that would like to get that?
9 Your technology?

10 A. We do know that.

11 Q. Can you tell the Judge the kind of harm that
12 would occur to ProTechnics if those trade secrets and
13 proprietary information were to get out into the
14 public?

15 A. Well, for me personally, especially right
16 now, what comes clear is we have had reductions in
17 force. You guys know the industry situation right now.
18 Ultimately, that's what it would end up leading to.

19 Q. Really damaging to their revenue?

20 A. It would be damaging to our profitability.
21 Ultimately, the number of people we're going to be able
22 to employ.

23 Q. One of the things that was at issue was
24 producing the contract with Range Resources. Contract
25 or subcontract. Did you -- did you collect the

1 pertinent agreement with Range Resources?

2 A. Correct. I provided the MSA.

3 Q. MSA. Is that the --

4 A. Master Service Agreement.

5 Q. -- Master Service Agreement?

6 A. Correct.

7 Q. Okay. Do you understand that that was
8 produced?

9 A. Yes.

10 Q. Okay. Did you also produce proposals and
11 invoices?

12 A. Yes.

13 Q. Specific to the Yeager site?

14 A. Yes.

15 Q. Okay. Do you understand that there were
16 jobsite surveys that were produced?

17 A. Yes.

18 Q. Okay. Can you tell me were there -- other
19 than jobsite surveys or a survey that might have been
20 produced -- or -- well, let me strike that.

21 Does ProTechnics use any or create -- strike
22 that.

23 Does ProTechnics create any other surveys or
24 use any other surveys as a part of the Yeager job?

25 A. We don't produce any other surveys. That's

1 the only survey we did.

2 Q. The jobsite survey; right?

3 A. The jobsite survey. We do -- as part of our
4 responsibility to the client up front is to design what
5 I call the diagnostic. More like the experiment.
6 How -- what their problem is, what they're trying to
7 solve, redesign it.

8 So they'll provide us with data on their
9 well, and then we decide, well, here's how we would
10 approach diagnostics to answer that question.

11 So they provide us, I think in this case, up
12 front, a directional survey. Different information on
13 the well. Our engineers then take that and decide,
14 here's how we would approach this problem. We would
15 then provide them with a proposal.

16 And then, at that point, they either call our
17 district, say, yes, we want you out here at such and
18 such time to provide that service.

19 Q. And has ProTechnics provided Plaintiffs with
20 any surveys that it had that it used or produced?

21 A. We provided them with the survey that we did.
22 The surveys that Range supplied to us was in the file,
23 you might say, or folder that we had when they -- that
24 we received from them. We also produced that survey.

25 Q. To Plaintiffs?

1 A. Everything we had on this job, we produced.

2 Q. Okay. And what about with respect to
3 correspondence with Range?

4 A. Yeah.

5 Q. Did you look for correspondence with Range?

6 A. We looked and provided the correspondence
7 associated with this well.

8 Q. Okay. You talked about the chemical tracers.
9 I want to focus now on the proppant tracer. And can
10 you explain what the product description was that was
11 produced, and why, you know, it had this data about
12 half-life, that kind of thing?

13 A. Yeah. Basically, those are the isotopes that
14 were pumped on this job. I think our report that was
15 provided shows how much on each stage and what type was
16 pumped. That is a brief description that we hand out
17 sometimes to provide people with an understanding of
18 what it is that we're pumping.

19 In this case, we had -- I mean, it kind of
20 describes in detail how we manufacture the bead. Where
21 it's a ceramic bead that looks like a sand grain. It's
22 like the proppant.

23 Typically, it's higher strength than sand, so
24 when the formation closes down, it can't get crushed.
25 It's -- even with sand that's propping it open is

1 weaker than the ceramic bead that we're using. So it's
2 a high strength ceramic bead that's typically used for
3 propping formations.

4 But what we've done with the patent several
5 years ago is we introduced small amounts of scandium
6 metal and iridium metal and antimony metal. And those
7 unique three metals, then, are taken to, let's say,
8 Texas A&M. Their reactor put downhole. They are
9 irradiated, and then they have a short half-life.
10 Sixty- to ninety-day half-life.

11 And we then inject that at very small
12 concentrations into the stream of proppant. Typically,
13 about 10 ccs per 50,000 pounds. So that's -- if you
14 look at a dual-axle dump truck, those hold
15 25,000 pounds of sand. So two dual-axle dump trucks.

16 And we'll have a little vial, about this
17 size, of these beads that we mix in fluid, and we pump
18 it in like an IV. We're just dripping it into the
19 stream. Marking all that 50,000 pounds of proppant
20 with a small amount.

21 We then -- and that's basically what that is.
22 That ceramic bead, because it's contained in the metals
23 inside of the ceramic matrix, the crystalline
24 structure, we labeled it, marketing-wise, as Zero Wash.
25 Because you can wash it with temperature, with acid.

1 The isotope stays internal to the ceramic bead. Stays
2 in place. So that as you produce the well, it's still
3 there. We can run an imaging log and identify where
4 the frac went.

5 So it's significant in that it's -- it goes
6 with the proppant, stays with the proppant, doesn't
7 move with production, and allows us to image where
8 things went.

9 Q. That being --

10 A. Kind of like a medical diagnostic.

11 Q. Translation, if the proppant, that ceramic
12 bead that's irradiated, if that is in the frac, the --
13 let's say, the crack under the ground --

14 A. In the proppant -- or in the fracture. In
15 the fracture.

16 Q. It's staying in the fracture; right?

17 A. Correct.

18 Q. Okay. And on the jobsite survey, were the
19 various isotopes actually listed on the jobsite survey
20 that was produced?

21 A. Yeah. The isotope and the amount.

22 Q. And that's like, for example, Ir-192?

23 A. Iridium-192.

24 Q. Yeah. And was there a radiation survey done
25 before and after to know --

1 A. Correct.

2 Q. -- whether or not there were increased
3 radiation levels?

4 A. Correct. We measure the natural radiation
5 background for the area that we're in. It would vary
6 whether you're in the mountains or at the beach or
7 whatever.

8 So we first get a baseline of what that
9 natural background radiation is. And then before we
10 leave, we go back and survey everything and verify that
11 we're at natural background. That's just part of our
12 licensed procedures.

13 Q. Okay. Going back to that master service
14 agreement, do you remember that there was a request
15 from Plaintiffs where they were asking about whether we
16 had any work orders?

17 A. Correct.

18 Q. Do you remember that?

19 A. Yes.

20 Q. Did you ask your guys whether or not there
21 were any work orders?

22 A. I asked the two individuals that would be
23 closest to it. The contact with the client salesman
24 and operations. Both of them together, at the same
25 time, and they both looked at me like, what are you

1 talking about?

2 So my thought is work orders are not
3 something that we do. Our work order for ourselves,
4 probably, would be -- and because our client doesn't
5 design the job and say, here's what I want you to do.
6 Our client gives us data. Our engineers design the
7 job. We put a proposal out that says, this is what we
8 should do. Provide them with that. And then the
9 engineer would say, yeah, that sounds good.

10 And then, at that point, our normal mode is,
11 we get a call to our district. Because we'll provide
12 them with the information about how to contact us, or
13 they already know. They call our operations group to
14 go out and do the job.

15 So it's kind of verbal, I guess, is the way
16 we --

17 Q. Verbal.

18 MR. ARNOLD: Your Honor, I have no further
19 questions at this time for Mr. Flecker.

20 THE COURT: Okay. Thank you.

21 Mr. Smith? Ms. Smith?

22 MS. SMITH: Thank you, Your Honor.

23

24

25

CROSS - EXAMINATION

1
2
3 BY MS. SMITH:

4 Q. Good afternoon, sir. My name is Kendra
5 Smith, and I represent the plaintiffs in this action.
6 I just have a couple of questions for you.

7 THE COURT: Ms. Smith, pull the microphone up
8 a little bit.

9 MS. SMITH: Is that better?

10 THE COURT: Yeah.

11 BY MS. SMITH:

12 Q. To begin with, Mr. Flecker, I received from
13 ProTechnics/Core Laboratories' counsel your affidavit
14 in response to our subpoena and the productions that
15 you gave. And I wanted to ask you a couple of
16 questions about that with regard to the information you
17 have just gone over as well.

18 It indicates in your affidavit that you are
19 president of Core Laboratories, LP, ProTechnics
20 Division; is that correct?

21 A. That's correct.

22 Q. And so Core Laboratories and ProTechnics are
23 one in the same company? It's just that there are
24 several divisions within Core Laboratories; is that
25 right?

1 A. What I would say -- and I think more in the
2 public view is it's more like a holding company.

3 Q. Core Laboratories is?

4 A. Correct.

5 Q. Okay.

6 A. And it depends. I mean, that's the way I
7 view it. The name overriding from a marketing point of
8 view is leverage. But each division operates
9 separately. We have no Core Lab marketing group. We
10 have no -- it's all -- each division operates on their
11 own.

12 Q. And you understand from the subpoena that was
13 served on Core Laboratories, slash, ProTechnics that it
14 was designated as just that? To Core Laboratories,
15 slash, ProTechnics; correct?

16 A. Are you saying the subpoena?

17 Q. The subpoena. Uh-huh. That counsel said
18 that you helped do a response to.

19 A. Correct.

20 Q. Okay.

21 A. I can't remember what the language on the
22 subpoena said.

23 Q. Okay. And, sir, in your 16-year tenure with
24 Core Laboratories/ProTechnics, have you ever worked in
25 the lab before?

1 A. I was responsible for the lab at one point in
2 time.

3 Q. Were you the lab manager of ProTechnics/Core
4 Laboratories?

5 A. For that, I filled the role of lab manager
6 for our chemistry lab. I was the -- hired on as a
7 director of technology, then manager of engineering,
8 vice president, president. So my involvement with the
9 lab was pretty intimate.

10 Q. Okay. And do you have any background in
11 analytical chemistry?

12 A. Not by education.

13 Q. But you were familiar with the laboratory --
14 ProTechnics/Core Laboratories' actual laboratory that
15 would do analysis on samples it would receive from all
16 over the world?

17 A. Yes.

18 Q. And are you familiar with the
19 instrumentation, the gas and ion chromatography and the
20 mass spectrometry, and how they work --

21 A. Yes.

22 Q. -- to give you an actual result?

23 A. Yes.

24 Q. Okay. And so with those instruments, once a
25 sample is put into one of those instruments, those

1 instruments are calibrated to test for certain
2 parameters, whether it be metals or radionuclides;
3 correct?

4 A. That is correct.

5 Q. And they're not just testing one sample at a
6 time, they're doing usually about 20 samples at a time;
7 correct?

8 A. Only one sample at a time.

9 Q. So with one -- you run your gas
10 chromatography instrument one sample at a time, not a
11 batch of samples; is that right?

12 A. That is correct.

13 Q. Okay. And so with each one of the samples,
14 the samples are labeled with a sample ID number;
15 correct?

16 A. Correct.

17 Q. And that's how you delineate one sample from
18 the other?

19 A. Correct.

20 Q. And when you receive a sample in, in that
21 laboratory, you receive it with what's known as a chain
22 of custody document that you briefly described when
23 counsel asked you; correct?

24 You have to answer out loud. You're shaking
25 your head.

1 A. I'm not certain what you're referring to.

2 Q. When you receive a vial of fluid in from a
3 customer to have it analyzed, you receive with that a
4 piece of paper telling you where it came from, what
5 customer had it, when that sample was taken, and what
6 it contains?

7 A. That's correct.

8 Q. Okay. And within that chain of custody
9 document, it gives you an address of a contact person,
10 whoever collected the sample, that you were supposed to
11 report the results back to; correct?

12 A. I don't believe so.

13 Q. So how do you know who to contact once you do
14 the analysis of the sample?

15 A. The well name would -- when we did the
16 proposal, there's a well name. And so that sample
17 coming in has a well name. And so we tie it to the
18 well name. And that well name, then, up front, we
19 would have the engineer or any information from the
20 proposal stage would then be tied. That's how it would
21 happen.

22 Q. And so, then, that well name is then tied to
23 the laboratory sample ID number; correct?

24 A. Correct.

25 Q. Okay. So if someone were to come to you and

1 say, I would like you to pull for me all the data
2 concerning Yeager 7H well, corresponding with Yeager 7H
3 well will be a sample ID number; correct?

4 A. Correct.

5 Q. And so, then, you could look up by sample ID
6 number those results; correct?

7 A. That is unfortunately -- we can, in the
8 database, get the sample results that way.

9 Q. Okay. And so when it is actually -- the
10 sample is actually put into the different
11 instrumentation, it's logged with that same sample ID
12 number; correct?

13 A. I believe that's correct.

14 Q. Okay. And then once that analysis is run by
15 that specific instrumentation, it is then uploaded into
16 an electronic, for lack of a better term, filing
17 cabinet; correct?

18 A. At that point, the way it's done is we
19 process the data and we calibrate converted. And the
20 only thing that's uploaded is the concentration
21 results. That's the only thing that's uploaded.

22 Q. And so when you run a sample by a specific
23 instrument, that specific instrument -- before you run
24 the sample, every morning you calibrate it, make sure
25 that it's working properly, it's calibrated to test for

1 particular parameters, whatever they may be --
2 radionuclides or metals or whatever; correct?

3 A. It is calibrated. And I won't go into
4 details about our calibration.

5 Q. Sure. But it's -- and the reason you do that
6 is to make sure that the instrument is running properly
7 and it's able to actually analyze as it's meant to do;
8 correct?

9 A. Yeah, that's correct.

10 Q. And that's done every morning before you
11 start samples, or at least one time during the day,
12 whenever you do that calibration; correct?

13 A. Yeah. That's proprietary.

14 Q. Okay. And so, then, once you do that
15 calibration and all of that is set with the instrument,
16 you then put the sample in, and it runs its analysis
17 with that laboratory ID number tied to that well
18 number, and it gives you a result?

19 A. Correct.

20 Q. That result is in concentrations; correct?

21 A. Can you repeat? Because I might have --

22 Q. Sure. So once the instrumentation does its
23 analysis of that sample --

24 A. Yes.

25 Q. -- it then gives you a result; correct?

1 A. Correct.

2 Q. And that result is in concentrations;
3 correct? Whatever they may be.

4 A. It is not in concentration.

5 Q. What is it in?

6 A. Area count.

7 Q. And is that true for both the gas and ion
8 chromatography, as well as the mass spectrometry?

9 A. It is for the gas chromatography, mass
10 spectrometry. I'm not certain about the ion. The ion
11 might actually produce a concentration result as a part
12 of that process, but I'm not certain. I --

13 Q. Then those -- I'm sorry. Go ahead. I didn't
14 mean to cut you off.

15 A. Yeah, I'm focusing on the GCMS, the gas
16 chromatography, mass spectrometry. That one does not
17 produce concentration. Just area.

18 Q. Okay. And so it produces the area in the ion
19 chromatography. It may produce an actual
20 concentration --

21 A. It may. I'm not certain.

22 Q. You're unsure. Okay.

23 Then those results are then uploaded into an
24 electronic system; correct?

25 A. Not the GCMS results.

1 Q. Okay. How are the GCMS results then uploaded
2 into your ProTechnics system?

3 A. We have a software -- custom software package
4 that we wrote from an efficiency point of view that
5 will take whatever data comes off the instruments and
6 will take the calibration instrument information and
7 the sample results and compute a concentration and
8 upload that into the database. That's the only thing
9 that's uploaded.

10 Q. Okay. So before it ever gets to upload, that
11 concentration calculation is done by the software;
12 correct?

13 A. Correct.

14 Q. So what you're uploading into your electronic
15 system is concentrations?

16 A. Correct.

17 Q. Okay. And that uploading into that system,
18 that system at Core Laboratories/ProTechnics is the
19 LIMS system? Laboratory information management system?

20 A. We actually have a custom system. The LIMS
21 systems that are out there aren't efficient enough. We
22 have a -- we do hundreds of samples a day, 24/7. We
23 had to develop our own software to handle that volume.
24 We handle a higher volume than most any laboratory --
25 normal laboratory.

1 Q. And that electronic system stores all of
2 those results by laboratory ID number; correct?

3 A. Correct..

4 Q. And when did ProTechnics get that LIMS
5 system?

6 A. Well, I hate to call it a LIMS system because
7 it's custom --

8 Q. Custom LIMS system.

9 A. -- and that implies it's, you know, a
10 third-party software.

11 So our custom application was developed
12 probably years ago and has been in development and
13 continues to be in development.

14 Q. Okay. And when you say it was developed
15 years ago, was it developed in 2008?

16 A. It was.

17 Q. So you had it up and running in 2008;
18 correct?

19 A. Correct..

20 Q. Where it allowed you to search your system,
21 the customizable LIMS system --

22 A. Yes.

23 Q. -- for laboratory results by laboratory ID
24 number; correct?

25 A. Correct.

1 Q. And you indicated earlier in your testimony
2 that with the raw data that because that wasn't in
3 concentrations that it would be meaningless if you gave
4 it to me; is that right?

5 A. I said that I did not know what use you would
6 have for it.

7 Q. Because it wasn't in concentrations?

8 A. Because -- yes, you would -- the ability to
9 convert that into something meaningful would require
10 calibration data and process.

11 Q. Right. And that calibration data would be in
12 the raw data package; correct?

13 A. I'm not certain what a raw data package is.

14 Q. The raw data package is everything from the
15 actual instruments, once it read how it was calibrated,
16 what it was calibrated to test for. That would be in
17 the raw data packages; correct?

18 A. There would be a raw -- there would be
19 several -- several raw data files associated with
20 calibration, and there would be a sample. So there
21 could be several.

22 Q. Okay.

23 A. So that is correct. Those would both --
24 they're both raw data at that point.

25 Q. And if I gave that information in that raw

1 data package that would have the calibration, the
2 method detection limits, the reporting limits, what the
3 instrument was calibrated for on that day, all the
4 laboratory checks in terms of blanks and how they
5 operated and whether they, you know, were compromised
6 in any way or what reagents were used. All that
7 information contained in there. That I then gave that
8 to an expert in analytical chemistry, he would be able
9 to give me those concentrations; correct?

10 A. Should be able to. There would be some
11 twists to it that would be maybe not normal. Again --
12 but close enough.

13 Q. And in your dealings in the lab and having
14 run the lab for Core Laboratories/ProTechnics at one
15 point, are you familiar with what types of methods --
16 approved methods are used by Core Laboratories and
17 ProTechnics to analyze samples? Like for metals or
18 radionuclides. That sort of thing.

19 A. What do you mean by "approved method"?

20 Q. Approved method. Like, for instance,
21 EPA 200.7 to test for metals.

22 A. Right. Yeah, I'm aware that we don't run any
23 approved methods. Ours are all proprietary and no
24 third-party agencies, no third-party companies are
25 aware of our processes. They're all confidential.

1 Q. And are these approved -- are these methods
2 that you use approved by any accrediting body at all?

3 A. No one knows of our process. It's all
4 confidential.

5 That would -- again, our tracers that we have
6 chosen what we're analyzing for, all of that is
7 confidential. As well as the process. So everything
8 combined, you could not have a third-party aware of
9 what we're doing.

10 Q. So, then, when you have to provide results of
11 testing that you've done on a radionuclide tracer -- a
12 radioactive tracer to, let's say, the United States
13 Nuclear Regulatory Commission, for which ProTechnics
14 holds a license to use radioactive tracers, how do you
15 ensure to the US government that the test results that
16 you're giving, those methods are correct and were
17 properly followed by your laboratory?

18 A. Yeah, we don't do laboratory analysis of
19 radionuclides because we don't receive those back at
20 the lab. Those are used -- placed downhole, and we run
21 an imaging log in the well to identify where those
22 tracers and concentrations, you might say, are located.

23 Any individual would be able to look at our
24 data and determine its accuracy with the data
25 standalone because we have in -- down in the earth,

1 naturally occurring radioactive shale sand that are
2 measured in American Petroleum Institute units. API
3 units. We are measuring that.

4 At the same time, we are measuring our
5 material. So it's almost like a self-calibration. You
6 can see how we're responding in this region of the well
7 where it's been calibrated, let's say, by a third-party
8 even, and show that ours is measuring exactly the same.
9 So that when you get down to the interval where our --
10 where the proppant tracers are located, there's direct
11 confirmation that those are calibrated within the well
12 itself.

13 Q. And so with regard to my question, for the US
14 government, when you, for instance, are required to
15 provide them with testing that you've done to show
16 amounts of radioactivity in a tracer that you're going
17 to use or you have used, how do you certify to the US
18 government that the method that you used to do that was
19 done properly, and two, the method or the instructions
20 it was supposed to do, if this isn't told to anyone?

21 A. Are you talking about laboratory? I'm not --
22 we don't do laboratory analysis of the results that
23 come back to our lab. It's always -- it's field. We
24 inject it in the field, we run our imaging logs in the
25 well itself, and they can look at that data at any

1 point in time. It's not hard to determine the accuracy
2 of that.

3 Q. You just said that you don't do analysis.
4 And we just talked about you receiving samples in and
5 doing analysis on samples.

6 A. Those are analysis for the chemical tracers.
7 Not the radionuclides. Because the radionuclides are
8 stuck in a ceramic bead and trapped in the rock. When
9 the formation closes, the proppant is held in place.

10 And so the way we measure the -- that -- the
11 whole purpose of that is not to measure something back
12 at the lab, it's to run an instrument in the hole and
13 run a survey across the wellbore to identify where
14 those proppants were placed, where the fracture is
15 located to make sure the targeted zones were actually
16 properly simulated.

17 Q. You're familiar with the term "sandout" or
18 "flowback," aren't you?

19 A. Yes.

20 Q. And when sandout or flowback occurs, some of
21 that proppant with the radioactive tracer in it can
22 come back to the surface; correct?

23 A. Correct.

24 Q. And that has happened with ProTechnics and
25 their Zero Wash tracers; correct?

1 A. On the Range 7H well? I'm not familiar with
2 that.

3 Q. Not on the Range 7H well, but in other places
4 that has happened; correct?

5 A. It has happened.

6 Q. Okay. And when that happens, those little
7 ceramic beads that you talked about being stuck in the
8 rock are no longer stuck. They come back up to the
9 surface with that radioactivity in it; correct?

10 A. Correct.

11 Q. And when that occurs, ProTechnics/Core
12 Laboratories is responsible for that radioactive
13 product that they put downhole that's now back at the
14 surface; correct?

15 A. That's correct.

16 Q. And when they are responsible for that
17 product, how do they test to ensure that the
18 radioactivity of that product that's now back on the
19 surface where it shouldn't be doesn't exceed certain
20 levels that would induce health effects?

21 A. The surveys that we used, 11 Model 3
22 (phonetic), you'll see on probably one of the reports
23 is what is commonly used to quantify that.

24 Those are calibrated on -- I think we even
25 calibrate at a greater rate than what the government

1 requires. And we're certified. We have a Spectrotech
2 Division that does that calibration. And we're
3 audited, you know, on a regular annual basis at all of
4 our districts, and so on.

5 Q. Who audits your districts?

6 A. It depends. If it's an NRC state or --
7 whether it's a -- you know, whichever state agency is
8 managing it.

9 Some states are regulated by the NRC. Other
10 states have their own health department or different
11 agency that does that.

12 Q. How about here in Pennsylvania? Which is it?
13 An NRC state, or does the Pennsylvania DEP Bureau of
14 Radiation do it?

15 A. I believe it's the DEP.

16 Q. And to utilize these radioactive tracers, I'm
17 correct, am I not, that you have to have a license?

18 A. Correct.

19 Q. And that license you hold -- that
20 ProTechnics/Core Laboratories holds, one is with the US
21 Department of Nuclear Regulatory Commission; correct?

22 A. Correct.

23 Q. And the other is with the Pennsylvania
24 Department Bureau of Radiation; correct?

25 A. That's one example.

1 Q. And in both of those licenses, it
2 specifically states what ProTechnics/Core Laboratories
3 can and cannot use radioactive tracers for; correct?

4 A. You know, I'm not -- when you say "for," I
5 don't know. I know that the purpose of the license is
6 to say what we can do and how we're supposed to do it.

7 Q. And those licenses limit how ProTechnics/Core
8 Laboratories can use those radioactive tracers;
9 correct?

10 A. Again, when you say "how," that sounds like
11 applications. Our applications can be widespread how
12 we use those tracers. It could be in cement. It could
13 be in many different applications. So I'm not -- the
14 way you're stating it is not clear to me.

15 Q. So you're not clear in the license that
16 ProTechnics and Core Laboratories holds with the
17 Nuclear Regulatory Commission for the radioactive
18 materials that it has used, you're unfamiliar with the
19 fact that it's spelled out exactly in that license what
20 it can be used for?

21 A. No. What I'm saying is, I'm unclear with
22 your question.

23 MR. ARNOLD: Objection, Your Honor.
24 Argumentative and badgering the witness.

25 She should be rephrasing her question in

1 light of the witness indicating he didn't understand
2 her question.

3 THE WITNESS: Yeah, I'm not clear with your
4 question. I thought I kind of said that how we use it
5 is there's many applications. So the way you phrased
6 the question, we don't really have restrictions on the
7 application.

8 MR. ARNOLD: And, Your Honor, I would add an
9 objection to this line of questioning.

10 She hasn't established that any of this
11 relates to the actual Yeager site. So she's going off
12 on this whole exercise. And I've allowed it 'til now.
13 But I do object to this without tying it to the Yeager
14 site.

15 THE COURT: I understand. Objection is
16 overruled for the time being.

17 BY MS. SMITH:

18 Q. Sir, with regard to your license --
19 ProTechnics/Core Laboratories' license to use
20 radioactive materials, both by the US government and by
21 the Pennsylvania DEP, is it your understanding in those
22 licenses that it specifically spells out the particular
23 uses that ProTechnics/Core Laboratories is being
24 authorized to use those products for?

25 A. I would have to look at the license.

1 Q. And with regard to the use of the radioactive
2 tracers at the Yeager site -- well, let me step back
3 for a minute.

4 I understood you to testify earlier that
5 radioactive tracers were used at the Yeager site;
6 correct?

7 A. Yes. The documentation shows, like I said,
8 how much we used.

9 Q. Okay. And to use those at the Yeager site
10 would require you to have a license by the Pennsylvania
11 Department Bureau of Radiation; correct?

12 A. Either that or a reciprocity.

13 Q. Okay. And with regard to the Yeager site and
14 the radioactive material that was used there by
15 ProTechnics/Core Laboratories, did ProTechnics/Core
16 Laboratories have a license to use radioactive material
17 there at the time it was used in 2009?

18 A. Certainly.

19 Q. By whom was that issued?

20 A. I don't recall. There was a time when we
21 operated in Pennsylvania through reciprocity. I don't
22 recall what year we switched over to having a license
23 in Pennsylvania specifically.

24 Q. Does 2008 sound familiar? Does 2008 sound
25 familiar? Does it refresh your recollection as to the

1 year that it went from reciprocity to a state license?

2 A. I can't say.

3 Q. And in 2010, was ProTechnics/Core
4 Laboratories cited by the Pennsylvania DEP for
5 utilizing radioactive material without a license?

6 MR. ARNOLD: Your Honor, I'm going to object
7 to this line of questioning.

8 She hasn't connected it in any way to the
9 Yeager site, to Washington County. She's referring to
10 things that are entirely far afield from this, and, in
11 fact, don't have anything to do with Range Resources.
12 Without her establishing some foundation for that
13 question, it's objectionable.

14 THE COURT: Are you asking about the Yeager
15 site specifically?

16 MS. SMITH: That's my very next question,
17 Your Honor. If that went to the Yeager site.

18 THE COURT: Okay. You may ask it.

19 BY MS. SMITH:

20 Q. Did ProTechnics/Core Laboratories receive a
21 notice of violation by the Pennsylvania DEP for
22 utilizing radioactive material at a natural gas drill
23 site in 2010 without a license?

24 MR. ARNOLD: I --

25 THE COURT: Overruled.

1 MR. ARNOLD: Well, I thought Your Honor ruled
2 that with respect to the Yeager site.

3 THE COURT: Well, I understand the next
4 question is now going to be, was that at the Yeager
5 site?

6 MS. SMITH: Yes.

7 MR. ARNOLD: Well -- okay.

8 THE COURT: You may answer that question.
9 Were you cited?

10 BY MS. SMITH:

11 Q. Do you want me to repeat it?

12 A. Yes.

13 Q. In 2010, did Core Laboratories/ProTechnics
14 receive a notice of violation for the use of
15 radioactive material at a natural gas well site without
16 a license?

17 A. That does not sound familiar.

18 Q. So you have no recollection?

19 A. I do recall one incident where -- our normal
20 process is to file for reciprocity before we come into
21 the state. It may have been that the sending of that
22 information for reciprocity did not happen prior to the
23 job.

24 Q. And that's why the NOV was issued? Because
25 radioactive materials were utilized before the license

1 was issued; is that correct?

2 A. It's not a license. It's a reciprocity.

3 Q. Before the reciprocity was issued?

4 A. Right. So we have a license to operate every
5 job. You have to -- when you don't have a license in
6 that state, you have to file for reciprocity. It's a
7 quick thing. And I think that happened -- the job --
8 we covered it, then the reciprocity happened. The
9 timing of that, if I recall correctly, didn't happen in
10 the proper sequence.

11 Q. And was that failure to have a license before
12 using -- or failure to have that reciprocity before
13 using that radioactive material at a natural gas drill
14 site at the Yeager site?

15 A. No. There are no issues with the Yeager
16 site, to my knowledge.

17 Q. How do you know that?

18 A. I would know because if there was anything
19 associated with the Yeager site, I would definitely
20 know at this point in time.

21 Q. What documents did you look at to confirm
22 that that notice of violation did not go with the
23 Yeager site?

24 A. There are several individuals associated with
25 discovery. The managers involved with any violations

1 sit right next to me. That would have been quite
2 apparent.

3 Q. Did you actually review the notice of
4 violation yourself to determine that, in fact, it was
5 not from the Yeager site?

6 A. I never looked at anything other than what
7 was associated with the Yeager 7H well site. And there
8 was nothing associated with this well site.

9 Q. Did you ask your managers if there were any
10 notices of violation issued by the DEP for the Yeager
11 site with regard to ProTechnics or Core Laboratories?

12 A. I asked them for anything associated with the
13 7H. Not just that.

14 Q. And did you ask them, as well, for either the
15 reciprocity or the license to use radioactive material
16 at the Yeager site?

17 A. No.

18 Q. So you didn't produce the license or
19 reciprocity that Core Laboratories and ProTechnics had
20 to get in order to use that radioactive material at the
21 Yeager site; correct?

22 A. Well, I think that associated with the 7H
23 well and the Range Resources interactions and the
24 discovery requests, that we provided everything
25 associated with the well.

1 There are many procedures that we do on every
2 single job that we didn't provide. You know, training
3 manuals, training certificates, you name it. What we
4 did was provide the data associated with the 7H well as
5 part of discovery.

6 Q. Sir, you indicated that you were the one that
7 helped prepare the responses to the subpoena; correct?

8 A. Correct.

9 Q. And the subpoena says, "Any and all documents
10 and things related to work performed or services
11 rendered for the Yeager oil and gas well site in Amwell
12 Township, Washington County, Pennsylvania, related to
13 any oil and gas well, on behalf of Range Resources,
14 Universal Wells at any time."

15 A. And we provided all that.

16 MR. ARNOLD: Your Honor, I would like to
17 object.

18 We're here today relating to the paragraphs
19 in Your Honor's order that are very specific. And none
20 of this relates to these paragraphs.

21 THE COURT: Ms. Smith?

22 MS. SMITH: Your Honor, with regard to that,
23 we asked for all of the documentation, contracts,
24 anything that they needed in order to do the job that
25 they did up at the site.

1 Clearly, one of those things that they needed
2 was a license. And he was up on the stand and said,
3 "We produced all documents with regard to the Yeager
4 oil and gas drill site."

5 Clearly, they haven't.

6 The fact that there were notices of violation
7 that have been issued against this company, number one,
8 for not having a license, and number two, for using
9 radioactive tracers, and those things releasing
10 inappropriately, which we still don't know what site
11 that is for, that's why I'm asking.

12 Because if there is no license to use these
13 radioactive tracers by ProTechnics or Core Laboratories
14 prior to the use, that should have been in with the
15 contracts and the master service agreement. All of
16 that stuff that they would have had to have had in
17 order to ever take the job and sign that contract
18 agreement. Which, clearly, the subpoena covers.

19 MR. ARNOLD: Your Honor, if I may. They
20 filed the motion to compel. They described the
21 paragraphs that they were seeking to compel a response
22 on. There is nothing in paragraph 7 of their motion to
23 compel that says anything about licenses with the
24 state. They didn't ask for it. They didn't ask for it
25 specifically in any meet and confer. They didn't ask

1 for it in their motion to compel. They didn't -- they
2 argued about it.

3 But what the evidence shows today is she has
4 no basis to say that any violation was ever found with
5 respect to the Yeager site. She's grabbing something
6 from a completely different place. She hasn't even put
7 in the basis for what she's saying. And she's trying
8 to use that to bootstrap to say that we didn't produce
9 something that they didn't even ask for or seek to
10 compel. And it's nowhere in Your Honor's order.

11 So this is a whole fishing expedition that
12 doesn't have anything to do with what we're here for
13 today, Your Honor.

14 MS. SMITH: Your Honor, as part of your order
15 it says that we would have this hearing in order to
16 assess the issues of relevancy. That's what this is
17 assessing. The issue of relevancy. Whether there
18 were -- these radioactive tracers, which, by the way,
19 Your Honor, with regard to my clients and whether those
20 radioactive tracers were in their water and whether the
21 DEP knew that they were using radioactive tracers so
22 that they could be tested for in my client's water is a
23 big issue in this case.

24 And if they didn't have a license to use them
25 even to begin with, then the DEP wouldn't have known

1 that they were using them and knew to test for them to
2 see if they had gotten into their water.

3 MR. ARNOLD: Your Honor, if it was a big
4 issue, why isn't it in their motion to compel? And
5 they're just -- there's no connection.

6 THE COURT: This notice of violation, you
7 have no evidence it has anything to do with the Yeager
8 site?

9 MS. SMITH: I don't, Your Honor. I have it
10 with me, and I'm going to give it to him. I just
11 wanted to ask some preliminary questions.

12 No, I don't.

13 THE COURT: Well, then, let's move on.

14 MS. SMITH: Okay.

15 BY MS. SMITH:

16 Q. When you received the subpoena and it was
17 brought to your attention and you were collecting
18 documents for it, did you limit your search in any way
19 to collect documents responsive to the subpoena?

20 A. No.

21 Q. And so did you just, then, look for documents
22 that had the Yeager name on it or the identification
23 number -- sample identification number? How did you do
24 that?

25 A. Well, we have a folder on all of the, let's

1 say, files associated with producing the product that
2 we provide Range. So, I mean, it was pretty much a
3 normal process to go and grab what information we had.

4 Q. And in that process, did you or anyone else
5 at ProTechnics speak with anyone at Range Resources to
6 see what it was that you should produce?

7 A. Not that I am aware of.

8 Q. You personally didn't?

9 A. No.

10 Q. At any time, did you or anyone else contact
11 Range Resources and inform them that you had been
12 served with a subpoena in this case with regard to the
13 Yeager site?

14 A. Not that I'm aware of.

15 Q. And you indicated in your affidavit in
16 Paragraph No. 3 that you spoke with someone in the
17 laboratory about collecting the analytical data from
18 the gas and ion chromatography and mass spectrometry;
19 correct?

20 A. Correct.

21 Q. Who was that person?

22 A. That was David Chastain (phonetic), the lab
23 manager.

24 Q. And you indicated earlier in your testimony
25 that you gave him the name of the Yeager well site to

1 go look for that information?

2 A. Correct.

3 Q. Did you ever give him the laboratory ID
4 numbers that were associated with that well name that
5 were put into or placed with the samples when they went
6 through the GCMS or the ion chromatography?

7 A. That would be unnecessary because the well
8 name, he goes to his database, he can look all that up.
9 He can get all the results. The parts per billion.
10 Everything that's within that report is stored in our
11 database.

12 Q. Okay. But in terms of getting the actual raw
13 data, did you give him the sample ID numbers so that he
14 could go to the raw data and match them up?

15 A. As I said, when I give him the Yeager 7H, all
16 that information is there. He's a smart guy, fully
17 capable, if not more than myself, to do that. So he
18 knows what he's doing.

19 Q. So do you know if he went and used the
20 laboratory ID numbers to go back to the raw data and
21 match it up?

22 A. He did make an attempt to go through, more
23 than once. Because the first time he went through he
24 said, "I looked for every way I can."

25 And then he went -- another time went back

1 and looked at an old database to see if it had anything
2 in it.

3 To my knowledge, you know, he knows the IDs.
4 We work with this every day. Currently, our system is
5 set up that if you have that well name, you can go to
6 the samples and click on them, and it will take you to
7 the raw data. That was a few years ago implemented.
8 But prior to that time, the system did not have that
9 capability.

10 Q. And so the raw data was stored in paper form
11 somewhere else, and you couldn't link the two; is that
12 right?

13 A. I don't know.

14 Q. Well, then, how do you know that he did a
15 search if you don't know that that's how it was done?

16 A. Because he told me he did the search.

17 Q. Well, if you say that you don't know how
18 that's done, how he would have gone back, did you ask
19 him what he did?

20 A. I did.

21 Q. Did you ask him if he went back to the paper
22 files and looked to match up the ID numbers to pull
23 that information?

24 A. The whole process of -- I don't know where
25 the paper -- there's an insinuation that we have paper

1 files. I don't know if we have them.

2 Q. Well, did you ask him?

3 A. I did not ask him about paper files. I don't
4 think we have paper files anywhere.

5 Q. So the system that you referred to in your
6 affidavit when talking about being able to retrieve the
7 data is purely your computer system?

8 A. Correct.

9 Q. You never looked or inquired as to whether or
10 not the raw data in paper form existed at your company;
11 correct?

12 A. I have never understood that we've ever put
13 our digital information on paper. It would be
14 inefficient and costly. And so I have no knowledge
15 that we've ever done that.

16 Q. So you have no knowledge that at your
17 laboratories you would use laboratory notebooks? Where
18 the actual technicians would be writing down
19 concentrations, how much of a reagent they put in
20 something? You have never used laboratory notebooks at
21 ProTechnics/Core Laboratories; is that right?

22 A. Not in the normal fashion.

23 Q. What does that mean?

24 A. Well, you're describing a process that I've
25 understood people do. Ours is more digital. Again,

1 it's all about efficiency.

2 Q. But you said it didn't go digital, where you
3 could read back to a sample ID number, until a couple
4 of years ago; correct?

5 A. A few years ago.

6 Q. And so that would have predated the Yeager
7 site in that testing; correct?

8 A. Well, as I said, we have a digital --
9 everything's done digitally. Whenever the mathematics
10 are done, the software that runs, it doesn't -- the
11 software doesn't go out and look at pieces of paper and
12 calibrate off of a piece of paper to compute a
13 concentration. So even back historically, it's always
14 done it digitally.

15 Q. And so why is it that when you were asked to
16 go back and get the raw data package for the testing
17 that was done at the Yeager site from the fluid -- the
18 flowback that you received from Range Resources, you
19 weren't able to do that?

20 A. Because we have no link between the database
21 and the raw data.

22 Q. Okay.

23 A. That was an intermediary software. That was
24 a -- would take that, process it, and upload it into
25 the database. There's no connection between the

1 database and the raw data.

2 Q. And so did anyone at ProTechnics/Core
3 Laboratories undertake the task of going back to just
4 that raw data and searching by laboratory ID number to
5 pull that information to respond to the subpoena?

6 A. David told me that he made some efforts to
7 figure out how to do that. And he was unable to figure
8 it out.

9 Q. So he couldn't figure out how to look for a
10 laboratory ID number in the raw data?

11 MR. ARNOLD: Your Honor, objection.
12 Argumentative.

13 MS. SMITH: That's how he said that it's
14 organized.

15 THE COURT: Overruled.
16 You may answer the question.

17 MR. ARNOLD: He's answered her question
18 multiple times.

19 THE COURT: Well, I think he has, but we'll
20 give him one more shot.

21 THE WITNESS: Yeah, I mean, basically, like I
22 said, there is no organized system out there for
23 keeping track of that data. Even for ourselves. We
24 can't go back and get that data. We have what we're
25 processing today, and we can convert it.

1 One thing to keep in mind, we have no care
2 for the raw data. The information that we care
3 about -- and what, obviously, we care about is what we
4 stored in the database. It's the parts per billion.
5 The concentration. That's the service we provide to
6 our clients. That's all we've been -- that was of
7 value at the time. The need to go back and look at raw
8 data has never been a business need for us.

9 BY MS. SMITH:

10 Q. So I understand from your testimony here
11 today and from your affidavit, it's not that
12 ProTechnics/Core Laboratories doesn't have that raw
13 data for the Yeager site, it's just that in its present
14 form, can't be searched on a computer. It would have
15 to be searched manually, and there's been no effort
16 made to try and determine how to most efficiently go
17 through that; is that correct?

18 A. There was an effort to try to figure out how
19 to go about doing it. And I think he had some
20 conversations with some people that had been there from
21 back then. And all I understand is that he was unable
22 to figure out how to go about doing it.

23 And then the other one is, does it even still
24 exist? We don't know.

25 Q. And you don't know whether it still exists

1 because you never undertook the process to go and
2 search the raw data; correct?

3 A. That would be incorrect. He made an effort
4 to go find the data.

5 Q. Well, you just told me you don't know whether
6 it exists or it doesn't exist.

7 A. That's correct.

8 MR. ARNOLD: Your Honor.

9 THE COURT: Now it's getting argumentative.
10 Let's move on.

11 BY MS. SMITH:

12 Q. With regard to the proposals and the invoices
13 that were produced in this case --

14 A. Yes.

15 Q. -- you would agree with me, would you not, in
16 the first two productions -- the first one in November
17 of 2015 and then the second one in December of 2015 --
18 ProTechnics/Core Laboratories did not produce any
19 invoices, just proposals; correct?

20 A. Correct.

21 Q. Why was that?

22 A. I think an oversight. I don't know.

23 Q. How did you learn that it was an oversight?

24 A. Whenever information came that said we didn't
25 produce the invoices, that was peculiar to me. I did

1 not know that an invoice hadn't been produced.

2 And so at the point in time when there was a
3 question about invoices, I said, I'm going to go and
4 get with accounting, and I'm going to do it myself.
5 Because it didn't make any sense to me.

6 So I took initiative on my own to go find out
7 what was going on. I thought we had produced it.

8 So I asked, I think, counsel here in
9 Pittsburgh to send me what was produced, because I was
10 puzzled by that. Because I thought they had to be
11 produced. So it was -- why it didn't get produced, I
12 don't know.

13 Q. So if a representation was made to this Court
14 that the proposals were the same thing as invoices,
15 that would be incorrect; right?

16 MR. ARNOLD: Your Honor.

17 THE WITNESS: Excuse me?

18 MS. SMITH: If there was a representation --

19 MR. ARNOLD: Your Honor, I'm going to object
20 because she's now coming at me on this. And
21 Mr. Flecker -- we thought we produced the invoices.
22 There was a miscommunication. There was an
23 administrative clerical error. Those invoices have
24 been produced. So we're -- again, we're wasting Your
25 Honor's time on this because there's no issue relating

1 to those invoices anymore.

2 BY MS. SMITH:

3 Q. Sir, with regard --

4 THE COURT: So you have the invoices?

5 MS. SMITH: Well, that's what I want to ask,
6 Your Honor. They represented -- counsel represented in
7 our last --

8 MR. ARNOLD: And I obviously produced them
9 afterwards.

10 THE COURT: Don't interrupt.

11 MS. SMITH: -- last meeting that the
12 proposals were the same thing as the invoices. And I
13 said, Your Honor, if that's counsel's representation,
14 I'll take him at his word that that's accurate. And
15 then we get a letter with attached invoices saying, oh,
16 here's additional invoices.

17 Clearly, proposals and invoices aren't the
18 same thing, and that's what my question is going to.
19 That they're two different things and whether we now
20 have all proposals and all invoices that were
21 requested.

22 MR. ARNOLD: And, Your Honor, I just want to
23 respond so that you understand.

24 As I told Your Honor at the last hearing, we
25 asked our client to give us the invoices. I think

1 Mr. Flecker is saying that there was some confusion on
2 his staff's part. They gave us documents. We thought
3 they were their invoices. We ended up getting -- we
4 went back when they kept asking about the invoices and
5 got the invoices. So Mr. Flecker has satisfied that
6 issue.

7 THE WITNESS: I'll take credit for that.
8 Somehow we didn't provide them. But as soon as I --
9 and I even asked him to send me the documents because I
10 would have -- I assumed they were going to be there.

11 But anyways, that's when I took action and
12 got the invoices. So I apologize.

13 MR. ARNOLD: Your Honor, I will state as an
14 officer of the Court that I did not have possession of
15 the invoices we produced to Plaintiffs' counsel until
16 literally a day or so before I actually produced them
17 to Plaintiffs' counsel.

18 THE COURT: Okay.

19 THE WITNESS: I'll take full credit. I
20 apologize.

21 BY MS. SMITH:

22 Q. Not a problem.

23 So what my question is, sir, with regard to
24 the proposals, there were a bunch of proposals that
25 were produced to us. And I'm going to hand you what

1 we've marked as Exhibit 1.

2 (Plaintiffs' Exhibit 1 was marked for
3 identification.)

4 MS. SMITH: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MS. SMITH:

7 Q. Could you take a look through them and tell
8 me, are these all of the proposals that exist for the
9 Yeager 7H well?

10 A. Looking at them wouldn't tell me. I can tell
11 you that we provided all the proposals for the
12 Yeager 7H.

13 Q. Okay. Have you had the chance to review the
14 document, sir?

15 A. Briefly, yes.

16 Q. Okay. And can you tell me by looking at this
17 document how you know that these proposals that we were
18 given that were represented to be from the Yeager site
19 are actually for the Yeager site? What identification
20 tells you that on here?

21 A. The Proposal 29718 would be what we would
22 reference.

23 Q. And is that number specific to the Yeager
24 site, Range Resources?

25 A. It would be, yes.

1 Q. Okay. But that's not -- it doesn't say the
2 Yeager site on here; correct?

3 A. It doesn't, no.

4 Q. Okay. But you know that number to be Range
5 Resources, the Yeager site, that these are the
6 proposals from?

7 A. Yes.

8 Q. Okay. And if you look through this package,
9 sir, are these all of the proposals for the Yeager site
10 that ProTechnics/Core Laboratories has in its
11 possession?

12 A. Yes. I think we have -- the top one is the
13 one that we sent to the client.

14 Q. When you say "the top one," the one that says
15 Completion Diagnostics --

16 A. The first two pages of this that says 1 of 2
17 and then 2 of 2, that's what we call our client
18 proposal. That's what we send to the engineer so he
19 knows what we're proposing.

20 What we send to our district office is a
21 little more information, so operations knows exactly
22 what they operationally have to perform.

23 You know, we call it a PTI District Proposal.
24 It might be -- maybe what we would -- you might better
25 call it a work order, even, for our personnel. So it's

1 to guide. This is an internal document. This does not
2 go to the client.

3 Q. Okay. But you know that it corresponds with
4 the Yeager site, Range Resources, because of the well
5 ID No. 29718?

6 A. That is correct.

7 Q. Okay. And it indicates on here that there
8 was going to be used in the different stages of the
9 frac of Yeager 7H both a radioactive tracer and a
10 chemical frac tracer; correct?

11 A. That is correct.

12 Q. And if we look at this document, it indicates
13 that there were eight stages of frac done -- or to be
14 done at the Yeager site; correct?

15 A. Correct.

16 Q. And in Stage 1, if we look at it just for an
17 example, it says that the radioactive tracer Ir-192 in
18 the amount of 125 millicuries was going to be used in
19 that stage; correct?

20 A. Correct.

21 Q. Okay. And that would have been 125
22 millicuries per injection; correct?

23 A. 125 --

24 Q. Millicuries?

25 A. Oh, each per stage?

1 Q. Yes.

2 A. Yes.

3 Q. Okay. And when that stage, for instance,
4 Stage 1, when Ir-192 was being injected into Stage 1,
5 it would be injected at one time at 125 millicuries?

6 A. Correct.

7 Q. Okay.

8 A. It's -- when you say "at one time," it's over
9 the duration of -- it might be these little vials mixed
10 in a gel. And so a -- it's plugged into high volume
11 lines, and it's just kind of at a concentration.

12 We have headphones on. We're listening.
13 It's like a kidney dialysis-type machine we use to
14 introduce this into the stream at a known
15 concentration.

16 So while they're pumping large volumes,
17 which, if you look here, we're talking about
18 500,000 pounds, you know, we're pumping tiny little
19 beads to mix it along the entirety of it.

20 Q. Right. And my question went to when you're
21 doing that, that's done in one injection? In the first
22 stage, one injection of Ir-192 in the amount of
23 125 millicuries was introduced; correct?

24 A. Right. When you say "one injection," I have
25 a picture of just a blob popping out. So it's over