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UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9600475
RECEIVED: 26 JAN 96 15

TO: PRESIDENT

CHRON FILE

FROM: LAKE
GRIFFIN, P

DOC DATE: 30 JAN 96
SOURCE REF:

KEYWORDS: LEGAL ISSUES
AIR FORCE

CONGRESSIONAL

PERSONS:

SUBJECT: RPT TO CONGRESS ON PRES EXEMPTION RE OPERATING LOCATION NEAR GROOM
LAKE

ACTION: PRESIDENT SGD PER WH EXEC CLERK DUE DATE: 30 JAN 96 STATUS: C

STAFF OFFICER: BAKER

LOGREF:

FILES: WH NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

BAKER
BELL
DANVERS
KRECKO
NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSGP

CLOSED BY: NSKDB

DOC 3 OF 3

UNCLASSIFIED

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 9600475

DOC ACTION OFFICER

001 BAKER
002 LAKE
003 PRESIDENT
003

CAO ASSIGNED ACTION REQUIRED

Z 96012615 PREPARE MEMO FOR LAKE
Z 96012915 FWD TO PRESIDENT FOR SIG
Z 96013011 FOR SIGNATURE
X 96013117 PRESIDENT SGD PER WH EXEC CLERK

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

003 960130
003 960130

DISPATCH FOR INFO

VICE PRESIDENT
WH CHIEF OF STAFF

UNCLASSIFIED

Rec'd 1/30 6:30am
National Security Council
The White House

PROOFED BY: _____

LOG # 0475

URGENT NOT PROOFED: _____

SYSTEM PR8 NSC INT

BYPASSED WW DESK: _____

DOCLOG ve A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Harmon	_____	_____	_____
Dohse	<u>1</u>	<u>S</u>	_____
Sens	_____	_____	_____
Soderberg	<u>2</u>	<u>No</u>	_____
Berger	_____	_____	_____
Lake	<u>3</u>	<u>Nat'l Sec Advisor has seen</u>	_____
Situation Room	_____	_____	<u>GRIFFIN</u>
West Wing Desk	<u>4</u>	<u>APR 1/30</u>	<u>P</u>
Records Mgt.	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A = Action I = Information D = Dispatch R = Retain N = No Further Action

CC:

COMMENTS:

*Needs to be
submitted to
the hill by
Jan 31*

Exec Sec Office has diskette wp

National Security Council
The White House

PROOFED BY: _____

LOG # 0475

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT

BYPASSED WW DESK: _____

DOCLOG ve A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
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Situation Room	_____	_____	_____
West Wing Desk	<u>1</u>	<u>ve 1/31</u>	<u>N</u>
Records Mgt.	<u>2</u>	<u>PR 1/31</u>	<u>N</u>
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A = Action I = Information D = Dispatch R = Retain N = No Further Action

CC:

COMMENTS:

Exec Sec Office has diskette _____

THE WHITE HOUSE

WASHINGTON

ACTION

January 30, 1996

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

President sgd per WH
Executive Clerk 1/30/96FROM: ANTHONY LAKE
PATRICK GRIFFINSUBJECT: Report to Congress on the Presidential Exemption
Concerning the Operating Location Near Groom LakePurpose

To report to the Congress pursuant to the Resource Conservation and Recovery Act (RCRA).

Background

On September 29, you exempted the Air Force operating location near Groom Lake, Nevada, (the operating location) "from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information" to unauthorized persons. The exemption was granted in the context of litigation over the Government's compliance with RCRA at the operating location.

Under RCRA, you are required to report each January to the Congress all exemptions granted during the previous year and the reasons for doing so. In addition to noting that the exemption was necessary to protect national security (without providing details), the report indicates that the exemption was not intended to limit the applicability or enforcement of any requirement of law applicable to the operating location except those provisions, if any, that would require disclosure of classified information.

This report has been coordinated with the Departments of Defense and Justice as well as the EPA.

RECOMMENDATION

That you sign the attached letters.

Attachments

- Tab A Letter to Speaker of the House
- Tab B Letter to President of the Senate

cc: Vice President
Chief of Staff

THE WHITE HOUSE
WASHINGTON

Dear Mr. Speaker:

Consistent with section 6001(a) of the Resource Conservation and Recovery Act (RCRA) (the "Act"), as amended, 42 U.S.C. § 6961(a), notification is hereby given that on September 29, 1995, I issued Presidential Determination 95-45 (copy attached) and thereby exercised the authority to grant certain exemptions under section 6001(a) of the Act.

Presidential Determination No. 95-45 exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local hazardous or solid waste laws that might require the disclosure of classified information concerning that operating location to unauthorized persons. Information concerning activities at the operating location near Groom Lake has been properly determined to be classified, and its disclosure would be harmful to national security. Continued protection of this information is, therefore, in the paramount interest of the United States.

The Determination was not intended to imply that in the absence of a Presidential exemption RCRA or any other provision of law permits or requires the disclosure of classified information to unauthorized persons, but rather to eliminate any potential uncertainty arising from a decision in pending litigation, Kasza v. Browner (D. Nev. CV-S-94-795-PMP). The Determination also was not intended to limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake except those provisions, if any, that would require the disclosure of classified information.

Sincerely,

The Honorable Newt Gingrich
Speaker of the
House of Representatives
Washington, D.C. 20515

Presidential Documents

Presidential Determination No. 95-45 of September 29, 1995

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada (the subject of litigation in *Kasza v. Browner* (D. Nev. CV-S-94-795-PMP) and *Frost v. Perry* (D. Nev. CV-S-94-714-PMP)) from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. § 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this Determination in the Federal Register.

William J. Clinton

THE WHITE HOUSE.
Washington, September 29, 1995.

[FR Doc. 95-23244
Filed 10-6-95; 10:54 am
Billing code 2910-01-M]

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B

THE WHITE HOUSE
WASHINGTON

Dear Mr. President:

Consistent with section 6001(a) of the Resource Conservation and Recovery Act (RCRA) (the "Act"), as amended, 42 U.S.C. § 6961(a), notification is hereby given that on September 29, 1995, I issued Presidential Determination 95-45 (copy attached) and thereby exercised the authority to grant certain exemptions under section 6001(a) of the Act.

Presidential Determination No. 95-45 exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local hazardous or solid waste laws that might require the disclosure of classified information concerning that operating location to unauthorized persons. Information concerning activities at the operating location near Groom Lake has been properly determined to be classified, and its disclosure would be harmful to national security. Continued protection of this information is, therefore, in the paramount interest of the United States.

The Determination was not intended to imply that in the absence of a Presidential exemption RCRA or any other provision of law permits or requires the disclosure of classified information to unauthorized persons, but rather to eliminate any potential uncertainty arising from a decision in pending litigation, Kasza v. Browner (D. Nev. CV-S-94-795-PMP). The Determination also was not intended to limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake except those provisions, if any, that would require the disclosure of classified information.

Sincerely,

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20515

Presidential Documents

Presidential Determination No. 95-45 of September 29, 1995

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

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Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this Determination in the Federal Register.

William Clinton

THE WHITE HOUSE.

Washington, September 29, 1995.

IFR Doc. 95-25244

Filed 10-6-95 10:54 am

Billing code 2910-01-M

Honorable Newt Gingrich
Speaker of the House
U. S. House of Representatives
Washington, D. C. 20515

Honorable Albert Gore, Jr.
President
U. S. Senate
Washington, D. C. 20515

Dear Mr. Speaker and Mr. President:

Consistent with section 6001(a) of the Resource Conservation and Recovery Act (RCRA) (the "Act"), as amended, 42 U.S.C. § 6961(a), which requires that I "report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with [my] reason for granting each such exemption," I notify you that on September 29, 1995, I issued Presidential Determination 95-45 (copy attached) and thereby exercised the authority to grant certain exemptions under section 6001(a) of the Act.

Presidential Determination No 95-45 exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local hazardous or solid waste laws that might require the disclosure of classified information concerning that operating location to unauthorized persons. Information concerning activities at the operating location near Groom Lake has been properly determined to be classified, and its disclosure would be harmful to national security. Continued protection of this information is therefore in the paramount interest of the United States.

The Determination was not intended to imply that in the absence of a Presidential exemption RCRA or any other provision of law permits or requires the disclosure of classified information to unauthorized persons, but rather to eliminate any potential uncertainty arising from a decision in pending litigation, Kasza v. Browner (D. Nev. CV-S-94-795- PMP). The Determination also was not intended to limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake except those provisions, if any, that would require the disclosure of classified information.

I am forwarding copies of this notification to the Chairman and Ranking Minority member of each of the following committees: House Committee on Resources; House Committee on National Security; Senate Committee on Environment and Public Works; and Senate Committee on Armed Services.

Sincerely,

Attachment:

Presidential Determination 95-45

cc:

Chairman and Ranking Minority Member:

House Committee on Resources

House Committee on National Security

Senate Committee on Environment and Public Works

Senate Committee on Armed Services

Administrator, Environmental Protection Agency

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

0475

January 26, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ALAN KRECZKO *AK KB*
FROM: JAMES BAKER *JB AK*
SUBJECT: Report to Congress on Presidential Exemption
Concerning the Operating Location Near Groom Lake

In September the President exempted the Air Force operating location near Groom Lake, Nevada, from any applicable provisions of hazardous or solid waste laws that would require disclosure of classified information. The exemption was granted in the context of litigation (Browner) over the Government's compliance with the Resource Conservation and Recovery Act (RCRA).

Under RCRA, the President is required to report each January to the Congress all exemptions granted during the previous year and the reasons for doing so. This is the first such report during this Administration. The attached report has been coordinated with the Departments of Defense and Justice as well as the EPA; it should be submitted to Congress no later than January 31.

As to the status of the litigation, we are doing well. On January 10, the district court determined that the EPA had completed its statutory duties with regard to the inspection and inventory of the operating location, rendering the Browner case moot. The court also ruled that the Government has "complied with RCRA's public disclosure requirements by virtue of the Presidential Determination," and has entered final judgment in the case.

In a companion case, Perry, in which you are a named defendant, the court is continuing to consider cross motions for summary judgment. We are optimistic in light of the court's ruling in Browner. Notwithstanding these successes, we will need to consider whether to appeal one aspect of the court's ruling: that in the absence of a Presidential exemption EPA has a nondiscretionary duty under RCRA to disclose classified information.

Concurrence by: Bob Bell, Bill Danvers, and David Sandalow

RECOMMENDATION

That you sign the memorandum to the President at Tab I.

Attachments

Tab I Memorandum for the President

Tab A Letter to Speaker of the House

Tab B Letter to President of the Senate

Tab II Incoming Correspondence



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010



26 JAN 1996

MEMORANDUM FOR PRESIDENT CLINTON
THROUGH MR. LAKE

SUBJECT: Congressional Notification of Presidential Exemption Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I recommend you provide the enclosed report to Congress pursuant to section 6001(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6961(a).

Section 6001(a) requires that you "report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with [your] reason for granting each such exemption." You granted such an exemption on September 29, 1995, in Presidential Determination 95-45, which protects classified information concerning the Air Force's operating location near Groom Lake, Nevada, from public disclosure. The enclosed report provides notice to Congress of the exemption.

The EPA Office of General Counsel and the Department of Justice Environment and Natural Resources Division have reviewed the report and concur with the Department of Defense that this report should be provided.

Attachment:
A/S